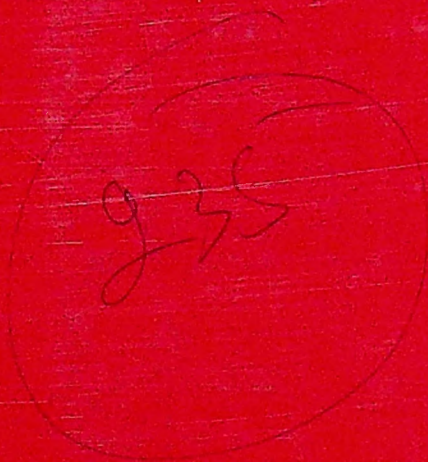


TIBETAN PEOPLE'S RIGHT OF SELF-DETERMINATION



Report of the Workshop on Self-determination of the Tibetan People



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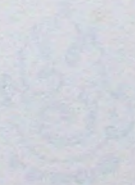


शारदा पुस्तकालय

(संजीवनी शा. दा. के.द्र.)

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Tibetan Parliamentary and Policy Research Centre
New Delhi



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TIBETAN PEOPLE'S RIGHT OF SELF-DETERMINATION

Report of the Workshop on
Self-determination of the Tibetan People: Legitimacy of Tibet's Case
1994/1996, India

शारदा पुस्तकालय

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PREFACE

Since the adoption of the Charter of the Tibetans in exile in June 1991 accrediting the Assembly of Tibetan People's Deputies to assume the paramount responsibility for the reconstruction of future of the Tibetan people, the fact of their being wedded to values anticipatory to a democratic way of life and their commitment to a democratic framework of legislative, executive and judicial institutions came to be recognised and appreciated. The liberal democratic forces in many countries realised that this ethos needed to be sustained in order to prepare the Tibetan Diaspora spread over many lands and territories, to preserve their national identity, culture and heritage.

The Friedrich-Naumann-Foundation of Germany, a foundation known for its liberal democratic ideals and for championing the cause of human dignity and universality of rights, included the Tibetan cause on its agenda and signed a Memorandum of Cooperation with Assembly of Tibetan People's Deputies. Tibetan Parliamentary and Policy Research Centre was set up as a project under this Memorandum of Cooperation to fulfil the objective of strengthening the infrastructure of the Tibetans in exile and disseminate information and knowledge to update their perception of political situation in and outside Tibet in order to carry forward the movement of support to their struggle for freedom.

One of the main objectives before the Centre was to analyse the rights and obligation of the Tibetan people for a mature development of Tibetan polity. It was in furtherance of this objective that Tibetan Parliamentary and Policy Research Centre convened two workshops (October 1994 and February 1996) in order to examine the rather complex issue of the Collective Right of Self-Determination of the Tibetan People as understood under International Law.

During the first workshop, the deliberations centred round:

- i. The question of the legitimacy of the Chinese authority over the Tibetan people from the legal, historical and moral point of views;
- ii. Legitimacy of the collective human rights of Self-Determination of Tibetan people; and
- iii. Modalities of implementation of this Right from an 'ought' point of view.

However, the discussions remained inconclusive and it was felt that the issue needed to be thrashed out clearly as the collective Right of Self-determination is quite often misunderstood essentially as a demand for 'Secession'. It also meant that the question is to be examined by experts from various disciplines — academicians, lawyers,

political commentators, human right activists, parliamentarians, non-governmental organisations, etc. in order to have a broad feedback based on facts as well as various interpretations of the law and principles involved in this entire issue.

With this purpose and objective in view, a second workshop was organised in February 1996. The participants represented various disciplines and schools of thoughts as was planned. The exercise proved of immense benefit and the workshop came out with a set of recommendations to be acted upon by the concerned agencies.

In this report we have integrated the discussions of the two workshops under seven heads: 1. Introduction, 2. Papers and written comments, 3. Discussion on the Concept of Self-determination, 4. Discussion on the Legitimacy of State Authority (a) The Historical Perspective (b) Legal Perspective (c) Political Socio-economic Perspective, 5. Discussion on Legitimacy of Right to Self-determination (a) The Historical Perspective (b) Legal Perspective (c) Political Socio-economic Perspective, 6. Modalities and Strategies, 7. Proceedings and recommendations, and 8. Documents. As discussions have been divided as per the subject we have not followed strictly the order of discussion. Chairman's remarks have also been integrated into the general discussion.

As the Executive Director of the Centre, it is my privilege to acknowledge our gratitude to the following for their guidance, support and assistance from the beginning of the workshop till the production of this Report:

- i. The Participants of both the workshops.
- ii. The Authors of the keynote papers.
- iii. Professor Samdhong Rinpoche, Chairman, Assembly of Tibetan People's Deputies and Dr. Jürgen Axer, Regional Director, Friedrich-Naumann-Foundation.
- iv. Mr. T.N. Chaturvedi, M.P. for inaugurating the second workshop.
- v. Professor R.P. Dhokalia for editing the entire Report and for help and guidance in shaping this workshop along with Shri Ajit Bhattacharjea, Shri L.L. Mehrotra and Dr. Subhash C. Kashyap at various stages right from the beginning to its conclusion.
- vi. Shri Sudhir Chandra Mathur and Smt. Madhu Mathur for supervising the recording of the proceedings, its transcribing, editing and typesetting of the report for making it print worthy.
- vii. Ms. Rebon Banerjee, Executive Programmes in Friedrich-Naumann-Foundation.
- viii. Colleagues in the office of Tibetan Parliamentary & Policy Research Centre and many others who through their invisible hands contributed significantly.
- ix. Friends Printing Works.

WELCOME ADDRESS

JURGEN AXER

Allow me to take this opportunity to explain why the Friedrich-Naumann-Stiftung has involved itself with the Tibetan issue.

In order that I answer this effectively, I would have to retrace the steps of history and begin with the defeat of Fascism after the second world war. The Germans realised the importance of political education which was not to be confined to schools alone, but to be expanded to include adult education as well. It was during this time that Political parties constituted political foundations in Germany, politically affiliated but legally independent and subsidised by the German tax payer. The funds allocated for these foundations are routed via the Ministry of Development Co-operation as well as the Ministry of Foreign Affairs.

The Friedrich-Naumann Foundation is a foundation which shares its political ideology with the Free Democratic Party or the Liberal Party, which for the time being is the junior party in the German coalition government. Prof. Theodore Heuss, the first President of Germany, was its founder. Thodore Heuss's intellectual mentor was Friedrich Naumann, a distinguished politician and a statesman in the Weimar Republic whose liberal ideology inspired Heuss to establish a Foundation to propagate his ideas.

As the Foundation of Liberal Policy, our focus lies in the principle of freedom with dignity of the individual. Liberal policy promotes human rights, rule of law and democracy.

The Foundation is active in the field of human rights not only in India but throughout the world. With the election of the 11th enlarged Tibetan Parliament-in-Exile in 1991, and the announcement of His Holiness to distinct himself from political affairs and to concentrate on being a spiritual leader of the Tibetans, the Tibetan Parliament-in-Exile assumed a stronger and a democratic role. Our cooperation with Assembly of the Tibetan People's Deputies commenced with the establishment of the Tibetan Parliamentary and Policy Research Centre. Our programmes centres on the Tibetans living in India and the international community, with the idea to evolve a strategy for the Tibetans so that all activities may be focused and streamlined.

This workshop has been organised within this framework. We hope that the statement which shall emerge at the end of the Workshop will be a platform for further discussion with the UN, with international NGOs, with representatives of other governments including the Peoples Republic of China.

With these few words, I thank you very much for your attention.

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** Attended the second workshop at Manesar only

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PROGRAMME

TIGER DEN, SERISKA, ALWAR (RAJASTHAN)

26 October 1994

First Session: Chairman: Ali Ashraf

LEGITIMACY OF STATE AUTHORITY (A) LEGAL (B) POLITICAL (C) MORAL

Second Session: Chairman: Ali Ashraf

LEGITIMACY OF THE RIGHT TO SELF-DETERMINATION (A) LEGAL (B) POLITICAL (C) MORAL

27 October 1994:

RIGHT TO SELF-DETERMINATION OF TIBETAN PEOPLE

Third Session: Chairman: J.M. Mukhi

LEGITIMACY OF CHINESE AUTHORITY OVER TIBET (A) HISTORICAL (B) POLITICAL (C) LEGAL (D) MORAL

Fourth Session: Chairman: J.M. Mukhi

LEGITIMACY OF TIBETAN CLAIM: (A) HISTORICAL (B) POLITICAL (C) LEGAL (D) MORAL

Concluding Session: Chairman: Ajit Bhattacharjee

MODALITIES AND STRATEGIES

THE HERITAGE VILLAGE, MANESAR, GURGOAN, HARYANA

23 February 1996

Inaugural Session: Inaugural Address: T.N. Chaturvedi

24 February 1996

Plenary Session: Chairman: A.P. Venkateshwaran

First Session: Chairperson: Michael van Walt van Praag

STATUS UNDER INTERNATIONAL LAW

25 February 1996

Second Session: Chairperson: R.P. Dhokalia

LEGITIMACY OF STATE AUTHORITY

Third Session: Chairperson: Ajit Bhattacharjee

COLLECTIVE HUMAN RIGHTS OF SELF-DETERMINATION

26 February 1996

Concluding Session

PART ONE

INAUGURATION

PROGRAMME

TIGER DEN, SERISKA, ALWAR (RAJASTHAN)

26 October 1994

First Session: Chairman: Ali Ashraf

LEGITIMACY OF STATE AUTHORITY (A) LEGAL (B) POLITICAL (C) MORAL

Second Session: Chairman: Ali Ashraf

LEGITIMACY OF THE RIGHT TO SELF-DETERMINATION (A) LEGAL (B) POLITICAL (C) MORAL

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26 February 1996

Concluding Session

PART ONE

INAUGURATION

BOOK

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY SAMUEL JOHNSON

LONDON: Printed by A. MILLAR, in Pall-mall, 1764.

IN TWO VOLUMES.

VOLUME THE FIRST.

THE SECOND VOLUME, 1765.

THE THIRD VOLUME, 1766.

THE FOURTH VOLUME, 1767.

THE FIFTH VOLUME, 1768.

THE SIXTH VOLUME, 1769.

THE SEVENTH VOLUME, 1770.

THE EIGHTH VOLUME, 1771.

THE NINTH VOLUME, 1772.

THE TENTH VOLUME, 1773.

THE ELEVENTH VOLUME, 1774.

THE TWELFTH VOLUME, 1775.

THE THIRTEENTH VOLUME, 1776.

THE FOURTEENTH VOLUME, 1777.

THE FIFTEENTH VOLUME, 1778.

THE SIXTEENTH VOLUME, 1779.

1. SELF-DETERMINATION: A RIGHT OR DUTY?*

S. RINPOCHE

This workshop has been organised to discuss the question of the right to self-determination. I with some of my colleagues are here only as listeners and observers, to clarify doubts in our minds and to gain knowledge.

There had been a number of academic and, legal discussions about the right to self-determination in general and right to self-determination particularly for the people of Tibet in the last three and half decades. Very beautiful and encouraging recommendations, resolutions, conclusions have been drawn, but the fact remains that the people of Tibet have suffered under the illegal occupation by the Peoples' Republic of China through military and civil forces. Not only is the occupation in violation of human rights, there has been destruction of cultural and religious beliefs and degradation of environment. Everything is unparalleled and you will not find similar case in the history of world.

We are now at the end of the twentieth century and are closely looking forward to enter the twenty-first century which is considered to be an 'age of civilisation and development'. However a section of people continue to inhumanely suffer for more than three decades and the rest of the human community is unable to do anything, which perpetuates the wrong doings of the occupied force. Many valuable philosophies, theories and systems are enshrined in the knowledge of humanity but these are very difficult to implement or to apply on the people who really suffer.

The objective of organising this Workshop is to discuss academically and find out what is the basic principle of the right to self-determination and whether the Tibetans are eligible for that. These things are already discussed a number of times. Even the United Nations Organisation, which is considered to be the highest world organisation, has twice passed strong resolutions which stated that the people of

* This is based on Welcome addresses delivered on 26 October 1994 at the Tiger Den, Sariska, Rajasthan and on 23 February 1996 at Manesar, Haryana.

Tibet must have the right to self-determination. But there are no instrument to implement these resolutions. These are only enshrined in the archives as documents, as pieces of paper. At this workshop we particularly expect, distinguished scholars, jurists and politicians to deliberate as to how these lofty principles and systems can be really implemented in order to ease the suffering of humanity, a concrete action plan and strategy on which the people of Tibet in exile can implement and move in that direction. If the principle of Tibetan people's right to self-determination is established then we need to do something to implement it, to alleviate the suffering people.

The entire Tibetan community, excluding the present generation, has been influenced by the ancient Indian knowledge and culture which has become part of our lives. From the seventh till the end of the twentieth century the teachings, the philosophical values, the basic values, the cultural attributes which we have imbibed, tried to protect and inculcate are hundred percent Indian way of life and culture, transmitted just as it is from India to Tibet. We have the good fortune that this culture and values have been retained without modifications. Many people therefore think that we are backward and traditional people and bereft of modern development and modern education. This is true, we have not been in touch with modernisation process and are unfamiliar with the modern political processes, diplomacy and terminology including that of 'self-determination'. In the ancient literature terms like *Atma Dipo*, *Atma Nath* (One's own master), *Atma Raksha* (self - defence), *Atma Shodan* (self) appear again and again but *Atma Nirnaiy* (right to self-determination) are synonymous with duties rather than with rights. Our thinking is conditioned by what should be our duties and not what should be our rights. We, therefore, take it for granted that we will not have to take the burden of self-determination on 'self' but would have to be shared by all in order to protect each other. The term 'self-determination' was therefore not coined nor was this principle ever considered. However, when our society and our nation came under attack, due to certain historical events, we began to understand the term 'self-determination' and realised what rights Tibetan people had been deprived of and which they deserved. We came to realise that there are men who deprive others of their basic rights by force and human society is not strong to provide protection to those who are deprived of these rights, or have means to get those rights restored.

The world today boasts of human development, of the many scientific and technological advancements of man reaching the moon and beyond, but the conscience of human beings to provide protection to each others human rights which did not exist possibly in the ancient times is not there even today.

It is said that when man lands on the moon he begins to float, his body becomes weightless because of the gravitational pull. However, even after reaching the moon the attitude of man — his ego, jealousy, anger, the devious tendency to hurt others and infringe on other man's rights, continue ingrained in his mind. He feels that since he is the first man to reach the moon he has an exclusive right over the area.

He feels that no one else has the right to hoist their flags. Only if the evils in their minds could also become light like their bodies, the man on moon would be a leap of humanity. The fundamental cause of all human miseries is man's ego and jealousy, resulting in man fighting man. This jealousy remains wherever he goes.

Thousand years ago people used to fight using swords, bows and arrows leading to death and destruction, victories and defeats. Today human civilisation has made big progress in the field of science or technology. When the question of war arise now we talk in terms of "mega death". Nobody talks about killing of a few people but how many mega - deaths does one need to win a battle? Today nobody can win a war. All will perish.

This is what humanity has achieved after so much of advancement. The attitude of man to fight and kill each other has remained unchanged through the ages. That is why old backward traditional and orthodox people and nations like us cannot understand the meaning of this new civilisation. It is said that right to self-determination is the birth right of every human being irrespective of his race and colour. This birth right however is the prerogative of only the rich and the powerful and those who succeed in wielding a wide support and not for those who lose that right at the time of their birth.

Pondering over all these contradictions, thinking and discussing them, I often ask what is the aim of all these exercises. Man lives on hopes and aspirations, which is his obligation, and he keeps searching for a new direction. The goal and objective which we are seeking, many people may negate it but some people will accept it. We may not reach the ultimate goal but the attempt itself is a measure of self-satisfaction. It is with this objective that we decided to organise this workshop.

There are many thoughts which are troubling my mind. There are questions which raise doubts which in turn are the reasons for the troubled thoughts. Man struggles with doubts and when more doubts arises which are enemies of faith, respect and spiritual strength, we should be able to find answers to such doubts.

We cannot define the words 'free' or 'independent' accurately in political language. However in our real life experience we did experience in our childhood freedom in our country without any external intervention. In politics, economic, foreign and internal affairs we functioned independently. Then we witnessed our people being overpowered by force, by a foreign nation with the help of the army and by killing thousands of people kept them under subjugation. Then for nine years we experienced what lack of freedom is. Soon thereafter we were exiled from our country and we experienced what it is to be without rights and what it is to be a refugee. There is no need to find any logic in these experiences. We have experienced it first-hand. Even if people try to negate this experience, we in person cannot negate it because we have experienced and felt it. We are told that Tibetan people are a nation and a community and since Tibet has been occupied illegally by the Chinese, the Tibetan people have a right to self-determination.

What is the role and status of the United Nations is difficult for me to understand. The United Nations does not follow democratic process nor are her actions consistent. People are convinced, however, that the United Nations is the biggest organisation of the world, powerful and influential to protect the rights of the people and therefore has an important role to play in the world. When this body takes any decision it carries weight and importance. We accepted this. Thrice in the General Assembly resolutions were passed saying that the Tibetan people have a right to self-determination, and efforts should be made to make it possible. A resolution was passed in 1965. The Indian Government took part in it and presented lengthy arguments to prove it. The speeches of Indian representative are published. All this would not have been attempted at the United Nations without a thought. There must be some basis for the arguments put forward at the UN. In spite of UN Resolutions till today no agency, no institution, no power has been able to implement restoration of rights to Tibetans. Resolutions have remained only on paper. For us this does not hold much importance.

Then a time came when we were told that Tibetan people should not talk about self-determination and this question should not be discussed. We were told that this is not an appropriate time to raise the issue of self-determination. When we asked for the reason, we were told that if Tibetan people start talking about the right to self-determination the Kashmiri people would also raise the issue which would create difficulties. Is there anything common between the Tibet and the Kashmir situation? In my view there is nothing common. Historically, Kashmir was a princely state within British India but Tibet was independent. When India and Pakistan attained independence a particular process for integration was followed for integrating around 500 princely states into India or Pakistan. In this process Kashmir legally acceded to India, and the accession was final. On the other hand China with the help of its army occupied Tibet by force but the rulers or people of Tibet never acceded Tibet to China. The basis of Kashmiris to ask for self-determination is not the same as Tibet's demand for self-determination. You cannot compare the two histories and situations. They are completely different. The argument that because Kashmir is asking for self-determination therefore we should not raise this issue for Tibet does not hold any logical reasons. If in effect Kashmir does have the right to demand self-determination why should that right be denied to Tibet?

These questions come to our mind. We felt, therefore, that intellectuals should discuss these issues and we should try to learn from them. In this context my only request is that while this workshop has been organised by the Tibetan Parliamentary and Policy Research Centre, you should not think that this meeting is partisan to the Tibetan cause or a Tibetan support group is in the making and something should be said and heard in order to sympathise and encourage the Tibetans. All these are not the reasons for organising this workshop. We want everyone to discuss, understand and test impartially all the issues and discuss the questions which I raised

and assess if there are any answers to them. Again we should assess whether we Tibetans are under false impression or have a wrong approach or views which are illogical, against basic global principles because we want to analyse where we have gone wrong. If we are on wrong path there is no harm in understanding the situation. If we are on a correct path but there is no remedy to achieve our goal, we should try to understand that position also. We want to know the truth and, whether our actions are principled and lawful. A scholar has written that there is "Right without remedy", right is there but if we know that there is no remedy and we cannot get it. We should also know whether we have any rights at all. If the rights are not there then why should we remain under the illusion that we do have rights.

My request is that you look at this issue impartially and show us the direction that we should take in the future and how we should improve our understanding and change our attitudes or beliefs. This is another area in which we would like to be enlightened. It is my humble request that without taking partisan or sympathetic attitude towards any group or community, analyse everything impartially and whatever comes out from this analysis it would help in guiding us.

Tibetan situation is very peculiar. It cannot be compared with any other country suffering under the hands of the political suffocation or by a foreign force which can remain engaged in fighting for the restoration of freedom from generation to generation. The situation in Tibet is entirely different. The time is running out. We might have the patience and endurance but the basic principle of the Tibetness of the people of Tibet is completely being wiped out from its own land and from its own territory. After certain period of time, even if Tibet regains the independence, it would only be a political change but the Tibet and the Tibetans will not be there to enjoy that independence. The time is a great factor to us and immediate action must be taken.

In this context, I would request you all to formulate a concrete work plan for us.

With these expectations I welcome you all and we are very much encouraged by your presence.

2. TIBET TODAY AND TOMORROW

T.N. CHATURVEDI

It is with a sense of trepidation, not with any sense of humility I am here to express my personal solidarity with the cause of Tibet in its multidimensional perspective.

I particularly wanted to draw your attention to the three papers and the proceedings that reflect all that happened at the workshop organised at Seriska. The papers give tremendous amount of information about the historical context, the evolution of law, the definition of the various concepts and their applications in the context of Tibet.

Tibet's case is unique, as the revered Rinpoche mentioned. These workshops are being held to spread general awareness amongst the common people as to what has happened, because we have to mobilise the people and inform them what exactly is happening. While doing so effort is also being made to understand different shades of opinion and how to garner public support and see in what manner the cause of Tibet evokes some sympathetic chord in the various political parties or groups of people with different opinion. That is a valuable exercise, and the material made available through these conferences is valuable. On the other hand this has to be a continuous exercise if the world public opinion and the national conscience has to be aroused. Secondly, it is important for the academics and persons with opinion to put across intellectual prepositions to ascertain exactly the legal status of Tibet at a point of time and in history.

In this workshop there are a large number of very learned scholars for example, Dr. Michael Praag. I have seen his book *Status of Tibet* which is one of the very definitive work. We have to look into the legal status of Tibet, its history, the sociological composition, the ethnicity and the other cultural aspects A pattern has to be woven, when one works out what exactly is the real situation. Now this is a very important consideration and that is why what has happened before might not have yielded the results. In concrete terms, alleviate the anguish of the Tibetan people, at least the awareness of it. After the awareness and the whole idea is created, the stage comes as Prof. Rinpoche rightly said,

* Inaugural Address at the Workshop organised at Manesar on 23 February 1996

for a concrete plan of action, lines on which we can proceed. Those lines also, as Prof. Dhokalia said, we need to approach with pragmatism. Venkateswaran would agree that pragmatism is not necessarily the lack of principle-mindedness. The question is how to proceed, the strategy to go about to achieve and find out the right means to achieve the right ends.

It is true that the Indian stand at times has been fairly strident while at other times, it has been very subdued. There have been some voices in this country who are trying to articulate the issue of Tibet at different times in different fora.

The present workshop is a stage where we can proceed in this, not on the basis of principles alone but by the realities of the situation as to how we can go about it which is particularly important.

The identity of Tibet, as Prof. Rinpoche has rightly said, is the Tibetanness. It seems something esoteric, something illusive but then there is something that we feel about it, or something like a current in the bulb and there is light but we are not able to see it. Its expression, articulation and its visibility is with us in a different way. We realise it because of Indianness. That is the most precious heritage. A new matchmaking has started. There is a cultural vandalism. Swami Vivekananda said each nation has a trait. He called Indians as very spiritual. Similarly about Tibet, they are very spiritual people and there is an assault on their religious rights, rituals and philosophy. That is something very disturbing from the viewpoint of the maintenance of the identity, otherwise we may have a Tibet but the essence of it which has been cherished through history may be lost. A time has come to remind ourselves as to what exactly is history even for the further argument..

A paper has been submitted on the religious liberty. Other papers take this many-sided view at the same time — the legal, the historical, and the cultural context.

In India we have to realise what is happening in Tibet which poses a large number of dangers. It is not a question of deforestation and sustainable development of that particular area, and we have discussed many of these, the dumping of nuclear waste, the floods, etc. but it is a continuing kind of political oppression, economic exploitation and violation of human rights.

Prof. Dhokalia mentioned the conceptual and the theoretical background to self-determination. Autonomy, I must say also can be misused and it has been misused. What is happening in India today is most unfortunate, in a sense that if the institutions collapse then the whole system collapses, even the constitutional system within the country. Prof. Dhokalia talks of the rule of law within the nation. Unfortunately we saw for years the distortion of the rule of law within the country and even the judiciary fell prey to it during the dismal period of two and a half years of collapse, and even the right to life was not supposed to be sacrosanct. Some kind of an equilibrium, an equipoise which the Constitution envisaged, those changes are needed. Dr. Subhash Kashyap and my other friends organised a number of seminars and have studied on this very question.

Similar is the question of international law. It is evolutionary. It is very difficult to pinpoint the law at a given point of time. That is why, Prof. Dhokalia's one of the very distinguished works is on codification. International law, is evolutionary which is for the moral order, moral thinking. I don't know whether the moral order transforms itself into legal order or the legal order transforms itself into moral order and the two reinforce each other, that is a very difficult question to answer. The legal legitimacy sometimes probably may not be enough and it requires moral legitimacy. Here is a case where the moral legitimacy, the legal legitimacy the voice of history point to a certain situation.

Mr. Mehrotra from his papers and others has drawn attention to some of the facts. He has drawn our attention to the United Nations resolutions and Lord Curzon remarked that Chinese suzerainty was a constitutional myth. We have also known as a student of history about this question of Tibet, why because of Russian influence this myth was invented of the Chinese at a point of history. All these things are very well documented and that provides as a basic raw material and the basic background.

Mr. Mehrotra has referred to the focus or the direction of the discussion in the context of the intellectual exploration. Certain conclusions will also follow. The concept paper mentions about the modalities of how we can go about it. As Mr. Mehrotra mentioned, one very important thing is that China should be persuaded by the UNO to enter into meaningful negotiation with His Holiness the Dalai Lama and his proposal of free association of Tibet to China and the member-states of UNO should create a powerful public opinion in favour of eventual independence of Tibet as a sovereign State. To me this is very crucial. This is the fulcrum on which the entire scope and the character of the workshop depends. Of course, many of them are the very intermediary steps. For example, the International Commission of Jurists did their work, in the 1960s. Now the time has come to analyse the new situation because of the allegation of genocide, violation of human rights and transfer of population, etc. Government in their bilateral relations with the PRC and in multilateral fora should take up the question of Tibet, particularly the right to self-determination and the right to live with dignity as human beings. After all when there is talk of human rights and all big nations have taken up this question, it is here that an approach about how we should go about it be looked into. Probably very experienced and knowledgeable people only will be able to throw some light on it.

The conclusions and modalities of this international conference will work out and further strengthen the need and the relevance of an international conference.

Prof. Nirmal — in his paper has actually mentioned the approach to the modalities. He has listed (a) decolonisation approach, (b) human rights approach, which was elaborated so well by Prof. Dhokalia, and (c) international peace and security approach. Lastly the most important thing is negotiations, approach, negotiations between China and His Holiness the Dalai Lama. How can this be

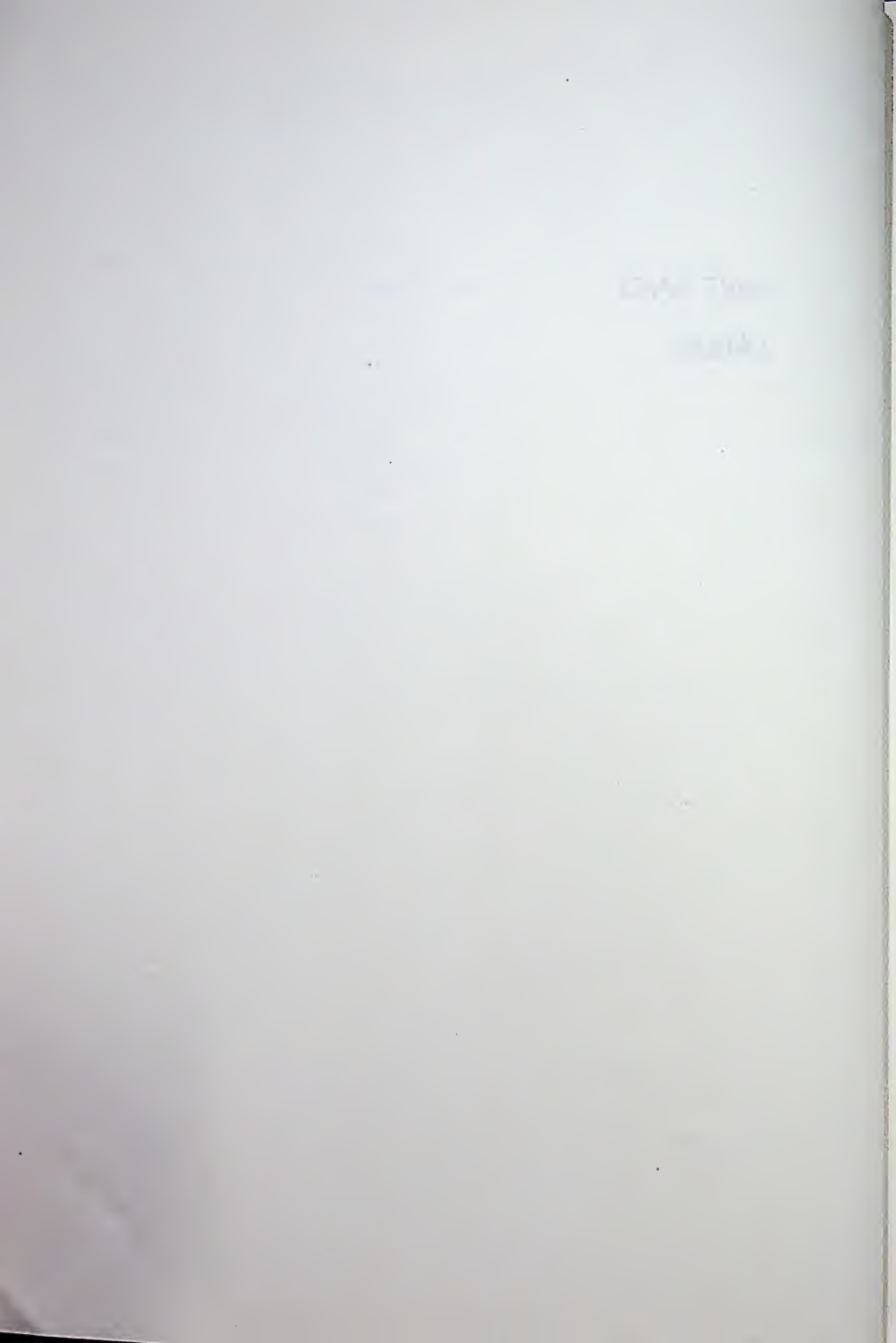
worked about? The kind of a compassionate approach, the kind of a very flexible understanding approach, even phase by phase, the way His Holiness and Prof. Rinpoche have been talking about. This is something which we have to pay a particular attention to and is of great importance to us.

I am overwhelmed by the honour that you have done to me by asking me to inaugurate this Workshop. I think, a workshop of this nature has its own intrinsic significance and it does not need a person like me to give it a start. I must congratulate Naumann Foundation and the Tibetan Parliamentary Policy Research Centre for having organised this particular Workshop. This Workshop itself and the modalities that will be worked out will provide the material as to how the world opinion at this point of time can be mobilised. It can lay down the guidelines and provide the material on the basis of which we can find a path, the ways and means which we can adopt and follow to achieve the goals which all of us cherish in common. I formally declare the workshop open.



PART TWO

PAPERS



1. LEGITIMACY OF STATE AUTHORITY AND OF THE COLLECTIVE RIGHT OF SELF-DETERMINATION

R.P. DHOKALIA

I INTRODUCTORY

World politics and international public order are entering a new phase in present times due to paradoxical developments. On the one hand are globalising economic factors and tendencies transcending the nation-state which are anti-democratic in operation and, on the other hand, there are democratic social forces within the nation state which have been let loose by the revolutionary movement of rising aspirations of peoples and groups of sub-national ethnic grassroots and by the human rights phenomenon. Despite the trends towards the development of transitional statehood, the nation state continues to remain the centre of legitimisation of rule and the most important body to which political demands are addressed by the peoples. Yet, it appears that the era of nation state may be fading in consequence of modern life of man transcending the nation state and its government and as a result of aggressive assertion on the part of sub-national forces rebelling against the imposition of state frontiers and the laws.

The dilemma of the mankind is that neither the inevitable supra- national government is acceptable nor the well entrenched nation-states are capable of guaranteeing requisite security and a sense of identity to their diverse peoples. The legitimacy of state authority as well as of the assertive claims of excessive self-determination of a variety of the epoch is to mesh the centripetal forces of economics with the centrifugal ones of politics. It appears beyond human social capacity to maximise both equality and understanding on the one hand, and incredible diversity on the other.

The internationally recognised principle of self-determination of people is a Pandora's box as it is generally understood to mean, necessarily and in all situations, secession and independence which entails anarchic fragmentation of existing states. A claim of any people to self-determination requires to be evaluated in a proper perspective of normative paradigms of modern international law. It is imperative for our deliberations on the "Legitimacy of the claim of the Tibetan People to the Right of self-determination", to have conceptual clarity about the meaning and scope of

the right as it has evolved during last few decades. This paper attempts to highlight various facets of the evolution of this collective right of people and to explore the paradigms of international normative regime. This is all the more necessary in view of the fact that, despite sympathy and moral support, there exists much intransigence and lukewarmness in India in respect of the question of self-determination of Tibetan people in the context of excessive claims of self-determination asserted in some parts of Indian territory with extreme violence, terrorist acts and linking them with religious fundamentalism. If religion brought about partition of India and language caused separation of Bangladesh from Pakistan, both religion and language continue to have emotive appeal in the Indian subcontinent. In the context of Kashmir, in particular, a serious discussion on complete contrast and dissimilarity of the Tibetan and Kashmir cases pertaining to respective claims to self-determination should clarify some prevailing misconceptions.

II THE LEGITIMACY OF STATE AUTHORITY TODAY

Legitimacy of an authority is the capacity of the system to engender and maintain the belief that the existing political institutions and institutional forms are the most appropriate ones for a society. Legitimate authority and territoriality are the key concepts in understanding sovereignty. However, State sovereignty, in the classic sense of total and indivisible state power and authority, has been eroded by modern technical and economic developments and by new international normative rules, in particular, in the areas of the prohibition of the use of force, human rights, and self-determination of people. State boundaries are no longer impermeable as all national systems are interdependent due to innovations in the sphere of communications and transportation. Doubts are apparently growing concerning the viability, extent and usefulness of the concept of nation-state sovereignty which is mitigated by new situations and exigencies.

With the erosion of the nation state and the sudden end of a world divided by the great 20th Century ideological conflict of the West with Communism, the paramount conflicts which have now emerged are clashes between civilisations, mentalities and ethnic communities. The proliferation of internal conflicts, civil wars and lesser acts of internal violence have presented a great challenge to human society as these have international repercussions. United Nations is now increasingly involved in internal conflicts of various forms as is evident from the dispatch of a series of UNO peace keeping forces recently deployed to maintain order and security in the areas of conflict.

Besides, we are living in an era of pervasive defiance of law and authority which transcends national boundaries. The modern nation state every where is in trouble.

because it has failed in spectacular way to provide peace and security to its people and to fulfil the rising aspirations and expectations of its population. The ideas of equality and liberty have impelled the underprivileged, the poor and the oppressed peoples to seek a new economic and political order. Also, ethnic aspirations are coming to the fore after long years of suppression. Increasingly, governments recognise that their legitimacy depends on meeting community needs and expectations and that, those seeking the validation of their authority can govern only with the consent of the governed. Democracy has today become, a global entitlement and an international legal obligation. Almost complete triumph of democracy with the collapse of Marxism-Leninism in Eastern Europe may prove to be a most profound event of the 20th Century to commence a new era in which only democracy and the rule of law will provide criteria of validating governance and authority.

Besides, democracy has become inevitable because it is the only system that can successfully cope with the changing demands of contemporary civilisation. It is more true now that popular sovereignty has become the basis of domestic as well as external endorsement of any governmental authority. The normative canon, expressed by the phrase "democratic entitlement", has become an accepted norm of validating governments. The new normative expectation requires States: to be plural democracies; to hold regularly free and open elections by secret ballot; to respect the rule of law; to ensure a broad panoply of democratic rights and fundamental freedoms as enumerated in the International Human Rights Covenants. These principles tend to provide a test for validation of governance and entry into the international society in future, and these will become the standard for participation in the international institutions of the global community. The rules pertaining to the freedom of expression, the right to participate in free and open elections, respect for human rights and fundamental freedoms, and the principle of self-determination are interwoven in the texts of numerous global and regional conventions, processes, procedures, institutions and systems.

Freedom of expression, electorate rights, and self-determination are the three basic components of the democratic participatory entitlements of a people and constitute internationally mandated restraints on governments of our times. These now provide a criterion of legitimacy of governmental authority by their association with a far broader panoply of laws pertaining to the rights of individuals *vis-à-vis* their governments.

The seemingly inexorable evolution of the principle underlying a universal democratic entitlement was first outlined in Article 21 of the Universal Declaration of Human Rights (1948), later embodied in Article 25 of the Civil and Political Covenant (1966), and further recently specified and reaffirmed by the UN General Assembly at its forty-fifth session in a nonbinding yet important, resolution (GA Res. 45/150 of February 21, 1991). This resolution has stressed the member nations:

Conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of every one to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights.

It further has declared that:

determining the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others, as provided in national constitutions and laws.

This principle of universal democratic entitlement entails that the participatory rights of a people in shaping their civil society cannot be abridged arbitrarily by any government and it energises the move to provide international protection for electoral rights. It recognises the three-way symbolic linkage between democracy, human rights and peace. The global normative entitlement of a people, to free expression as a human right and to a participatory electoral process, are subsumed in their entitlement to the right of self-determination:

The gradual transformation of the democratic entitlement from a moral prescription to an international legal obligation has been accelerated only in the past decade to the extent that an international law based entitlement is now urged by all peoples as well as by their governments themselves to the extent that almost all of them represented in the UNO are legally committed to permitting open, multi-party, secret ballot elections with a universal franchise, and to ensuring the respect for human rights.

Governments today are fully aware that they cannot govern by force alone and so they have to seek validation of their authority by securing a high degree of voluntary public acquiescence in the governing process. At the national level, it is the collectivity of people as the governed which ultimately decides whether the standards of the democratic entitlement have been complied by the rulers claiming the right to govern. At the international level, legitimacy of national governments depends upon the bonafide credentials of a regime and fulfilment of emerging global requisites of democratic validation of governments.

The right of self-determination of peoples has proved to be one of the most frequently cited principles of international law in the post war era. Self-determination indeed is the historic root from which the global concept of modern democratic entitlement of people has emerged.

Historically, the principle of self-determination served well these people who sought to dissolve empires as well as the governments of alien people imposed on distant colonies, and which were based on armed conquests, political oppression and economic exploitation of the colonial people by the metropolitan centres. Nationalism emerged not only as a way to acquire symbols of selfhood but, even more important as a way to lay the foundation of responsive governments. Beginning with the American colonial rebellion, launched for self-expression and representation, to the final round of the thrust of self-determination against Imperial governments in the post-world war II era, which led to the collapse of colonialism and emergence of ex-colonial Asian and African peoples as independent nations, and proliferation in the number of the United Nations membership, the quest for self-expression, recently witnessed from 1989 to 1991, is a most dramatic development when the Soviet Empire crumbled with a speed only because the imposed government lacked legitimacy. The unresponsiveness of the East European governments too has explained the successive collapse of Communist regimes in each of those countries.

However, in its new incarnation, after the end of Western colonialism, self-determination has been understood to have largely exhausted its legitimacy, because currently self-determination movements have been promoting fragmentation and separatism in existing states, undermining the potential for democratic development in non-democratic countries, and even threatening the very foundations of democracy in democratic ones by linking themselves with terrorism and religious fundamentalism. Self-determination is a noble concept, but it must not be misused to atomise the world community by formation of a plethora of mini states.

III THE LEGITIMACY OF THE HUMAN RIGHT OF COLLECTIVE SELF-DETERMINATION TODAY

Determinacy and Legitimacy

Self-determination had no status of a positive rule of law before the Second World War, though the Covenant of the League of Nations, without even mentioning it, applied the principle to the protection of minorities and the vanquished lands of the postwar Europe. The Minority Treaties, under the League of Nations system, had provided for protection of life, liberty, and freedom of religion to the minorities inhabiting the territories concerned, equal treatment before the law in respect of civil and political rights, and security to all linguistic, religious or ethnic minorities and subgroups as guaranteed to all nationals. Self-determination, however, has become a dynamic concept after the Second World War for bringing about rapid decolonisation and collective human rights of people.

Article 1, Clause (2) of the UN Charter provided for the principles of equal rights and self-determination of peoples as one of the purposes of the United Nations. In addition to the seemingly vague references in the Preamble and the statement of the purposes, the right of self-determination found a place in Article 55 and again in Chapters XI, XII and XIII of the UN Charter on non-self governing territories and the trusteeship system. The UN General Assembly, with the support, drawn preponderantly from new Members, which were previously colonies and were earlier disinherited of self-determination, adopted during 1960's and 1970's several landmark resolutions which were anti-colonial. The quasi-legislation declaring colonialism as illegal has come to be known as the new higher law of anti-colonialism in the sense of *jus cogens*, a peremptory norm prevailing over other rules. The reiteration of the right of self-determination, both in numerous declarations and resolutions, conferred great authority upon self-determination as a peremptory norm which has been made a part of contemporary international law. This law unequivocally confirms that colonialism, in all its forms and manifestations, including the methods of neo-colonialism, constitutes a gross encroachment on the status and dignity of people and on their basic human rights and freedoms.

The nature of self-determination, in the post-World War II era of national, racial, and cultural equality, as well as of individual equality, was clear for the overwhelming number of a new group of nations which were seeking overhauling of the classical inter-states law imposed by dominant Europe. The new nations expressed assertively, not only the principle of self-determination *vis-à-vis* colonialism, but also on a variety of other issues such as the ending of racial discrimination or the notorious *apartheid*, the implementation of the Chapter XI (Trusteeship system) of the UN Charter, and the promoting of respect for human rights. The equalitarianism, ardently espoused and pursued by the "new" nations, drastically altered the associational arrangements among the peoples of the world. The rise of a new class or classes to political power, at the national as well as international level, led to a call for the reordering of human society and its legal norms. In addition to a series of anti-*apartheid* and equalitarian resolutions, the UN Declarations and Covenants, pertaining to expanding dimensions of human rights indeed marked a revolution in the associational arrangements of human beings. These aroused aspirations of the underprivileged and oppressed peoples all-around the world and created mass awareness as well as motivation to question traditional oppression, discrimination, and abuses and violation of human rights. Human rights of individuals as well as of collectivities of individuals, organised in social and economic groups or communities, which are the centres of power and authority, have come to be construed to constrain every arbitrary application of power. These rights entail responsibility of those, exercising power and authority, towards the people concerned as well as to the global human society in general in order to ensure both accountability and justice in the acquisition, management,

distribution and exercise of power and authority in relation to individuals. Human rights, including the right of self-determination, as conceived and recognised in the last few decades of the twentieth century, are justifiable claims on behalf of the human kind to corporate action and these have a dynamic nature in reference to time and space to provide a criterion of legitimacy for the exercise of any kind of authority including that of state governments.

The concept and the content of human rights including the right of self-determination, have, in course of historical development since the Universal Declaration of Human Rights by the United Nations in 1948, expanded dynamically beyond their original meanings in response to social necessities and changing expectations and aspirations of people. The International Covenant on Civil and Political Rights and the other on Economic, Social and Cultural Rights, both adopted by the United Nations in 1966, spelled out basic human rights of individual. The former spelled out attributive rights to emphasise the concept of liberty and which States should refrain from interfering with. The latter underlined the principle of equality which society should ensure without discrimination.

The new generation of human rights, such as the right of self-determination of people, the right of environmental protection, the right of development, and the right to peace and security, encompasses "solidarity" rights which stress the concept of fraternity since it is the people, a community, or a group as a whole which is entitled to these rights along with its members individually. For example, the right of self-determination claimed by people is a prerequisite of the actual exercise of all other civil, political, economic, social and cultural human rights of the individual, and the denial of the former generally results in the denial of the latter. It is for this reason that the right of self-determination of people finds a place in the basic provision of Article 1 of both the International Covenants on Civil and Political Rights as well as on Economic, Social and Cultural Rights.

The collective Right of self-determination of people has two aspects: on the one hand, is its original version prohibiting colonialism or foreign rule, and, on the other is its new incarnation which prohibits oppression and arbitrary exercise of any authority, implying thereby respect for human rights and dignity, responsive government, or democracy. If people in a territory become independent of any alien exploitative colonial rule as to enjoy the status of an independent nation, they indeed have accomplished self-determination in their liberation. In case of a non-colonial situation the people are entitled to have a government based on their active participation so that those who are in positions of power respect the life, freedom, culture, and integrity of individuals and groups. In both situations the right of self-determination is fully assured in different ways.

The collective right of self-determination is legitimated by its fairly long pedigree. Its three pronged evolution as a normative entitlement of people has taken place under a system of rules in contemporary International law and is further supplemented

by the practice of states as well as of global and regional organisations. Three phases of evolution of the right of self-determination have stressed following three aspects in succession:

(a) The Right to Decolonisation and the Formation of An Independent State

In its first phase, the right of self-determination appeared after the World War II, as a normative entitlement of colonies and non-self-governing territories. In the postwar world of rising nationalism and the commitment of the victors to place former German, Japanese, and Italian Colonies under the Trusteeship System with an obligation "to promote . . . progressive development towards self-government or independence", self-determination came to be recognised as a writ for obtaining decolonisation.

Under Article 1, Clause 2 of the UN Charter, and under the auspices of the UNO, the exercise of the right of self-determination by colonies transformed the world's political landscape without war or revolution and, for that historical transformation, credit goes to the normative legitimacy and primacy accorded to self-determination by the new higher law of anti-colonialism expressed in a series of landmark declarations and resolutions adopted by UN General Assembly during the 1960s. In particular, the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) enunciating the applicable principles of self-determination deserves special mention. Other instruments such as, the Declaration on Friendly Relations (1970) reiterating the duty to end colonialism and to permit the colonies to assume a political status freely determined by the inhabitants; the Resolution on Importance of Universal Realisation of the Right of Peoples of self-determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights (1971); and Resolution 3246 on Importance of the Universal Realisation of the Right of Peoples to self-determination emphasising the imperative need to put an end to the colonial rule in Southern Rhodesia (1974) were of landmark importance.

The anti-colonial resolutions of UN General Assembly and those on self-determination again and again reiterated the inalienable right of self-determination with reference to only colonial peoples; the legitimacy of self-determination movements and their struggle to exercise the right towards independence; and illegality of subjugation, domination, and exploitation of colonial people, including the hampering of the liquidation of colonialism and racism. As a general principle of modern international law accepted by the World Community, the principle of self-determination, during its first phase of development has rendered colonialism not only obnoxious but also illegitimate under all and in any circumstances.

Recently adopted UN Vienna Declaration and Programme of Action on Human Rights of 25 June 1993 has recognised in respect of particular situation of people under colonial or other forms of alien domination or foreign occupation "the right

of peoples to take any legitimate action in accordance with the Charter of the United Nations, to realise their inalienable right of self-determination." It considered "the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realisation of the right". However, it unequivocally emphasises that this, right "shall not be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of Government representing the whole people belonging to the territory without distinction of any kind". Thus the norm of self-determination of peoples in its first phase of evolution clearly speaks against colonial empires which came to be seen as increasingly illegitimate and unacceptable through the late 1940s and 1950s.

(b) Respect for Human Rights of People - A Normative Entitlement:

In its second phase of evolution, self-determination became closely connected and intertwined with the collective human rights. The United Nations, by a series of instruments, provided for normative entitlement to the individual human person's worth and dignity and, to that end, promoted respect for his/her basic civil, political, economic, social and cultural rights as well as fundamental freedoms. The UN Charter, Universal Declaration of Human Rights (1948), the two International Covenants on Human Rights (1966), International Conventions relating to Elimination of Racial Discrimination and Suppression and Punishment of the Crime of Apartheid and other instruments relating to women and children, supplemented by regional instruments on protection of human rights in Europe, Americas and Africa, recognised specific entitlements as accruing to individual citizens. All these have constituted internationally mandated restraints on governments. Article one of both, International Covenant on Civil and Political Rights as well as of International Covenant on Economic, Social and Cultural Rights, categorically stated in identical terms that:

- (i) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- (ii) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation based on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The International covenants on human rights have been ratified by more than 100 states to create binding customary law for other states as well. For the enjoyment

of all human rights as enumerated in the Covenants, the right of self-determination was recognised as a precondition and fundamental to deserve primacy among the human rights because its realisation was deemed to be a guarantee for the effective observance of individual human rights and for the promotion and strengthening of those rights. Thus, recognition of the right of self-determination of people, as a precondition of enjoyment of all human rights, provided legitimacy to political action and revolution wherever individuals or human groups sought identity, respect for human dignity, and equal opportunity of self-fulfilment, or whenever they confronted oppression, exploitation, discrimination, or deprivation and violation of their human rights and freedoms.

However, in case of minorities and particularly indigenous peoples, the way to survival is self-determination rather than State patronage and protection. The peculiarity of the rights of minorities and indigenous peoples stems from the fact that these can only be claimed collectively and, in their case, no individualisation of human rights seems possible. Article 27 of ICPR establishes legal guarantees for the benefit of the individual members of the ethnic, religious or linguistic minorities, but does not bestow rights on minorities as collective entities. This does not lead to individualisation of the collective human rights of minorities. Thus, for minorities, the right of self-determination has been transformed to some extent from a group right into individual right. As such individual "right of self-determination" of minority communities remains a sterile concept in International Law. The relevant unit for this law is the people.

Because of illimitable vastness of the claims of minorities, particularly in the context of increasing concern for the survival of indigenous people who have been victims of marginalisation and discrimination, historically complicated relationships have underlined the importance of a political compromise and recognition of the need for protection of collective rights of minorities. They are making claims to the right of self-determination as a collective right for the protection of their cultural identity as well as their survival.

The collective right of self-determination has implied even a right of revolution against the *status quo* and the establishment, because the structure of state power reflects past history and often fails to resolve the historically complex relationships. The Preamble of the United Nations Declaration of Human Rights acknowledge a contingent right of revolution when it proclaims:—

..it is essential, if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

The right of self-determination, as a right of revolution, particularly in non-colonial situations inescapably has acquired enigmatic character because of the value-laden

approach of the existing states, whether old or new which make qualitative distinction between actions as well as situations. Self-determination, if interpreted to give any cohesive group of separately distinguishable peoples the option to secede from mother country whenever they so desired, exposes multi-cultural, multi-racial and pluralistic states, embracing large cogeries of diverse peoples to disastrous and anarchic shattering of their authority and territorial integrity.

The new normative rules pertaining to human rights and self-determination have severely undermined some of the basic traditional ideas linked with State sovereignty, namely, "domestic jurisdiction, the exclusive rights" of a State to govern its own citizens according to its discretion, and "nonintervention". This has created problems for the authoritarian States and developing countries, in particular as the factors like, politicised administration of justice, dominant position of the elite class in their stratified systems, widespread discriminatory practices, and social and economic backwardness, have exposed their constitutional systems to serious challenges as these engender social and cultural conflicts pertaining to the human rights of persons *vis-à-vis* governments which inevitably warrant some response from the world community.

The minorities' problems and the promotion and protection of human rights of indigenous peoples are closely linked with the right of self-determination of peoples and their collective human rights. Recently, the United Nations World Conference on Human Rights, held at Vienna, 14-25 June, 1993, adopted Vienna Declaration and Programme of Action which has reiterated the responsibilities of all States in conformity with the UN Charter and the re-dedication of UN Members to the global task of promoting and protecting all human rights and fundamental freedoms for all, and respect for the principles of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living, and solidarity. It has declared that:

1. . . . Human rights and fundamental freedoms are the birth right of all human beings, their protection and promotion is the first responsibility of all Governments.
2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.
3. . . . All human rights are universal, indivisible, and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect human rights and fundamental freedoms.

Thus the anchoring of the right of self-determination of peoples as a collective human right has led to a process of development of further collective human rights of groups

within existing states. The significance of the human rights connection lies in promoting the rules and the processes for realising self-determination by creating the opportunity for a people for self-development.

(c) Entitlement of People to Democracy and Fair Electoral Process:

The third direction in which the dynamic concept of self-determination seems to be evolving now relates to the emergence of global normative entitlement of people as a collectivity to free expression through participatory electoral process and democratic system of governance.

Most of the past revolutions in the West — the Glorious Revolution (1688), the American Revolution (1776), the French Revolution (1789), and the October Russian Revolution (1917) — were concerned with the emancipation of a people and the rejection of absolutism, which implied the right of a people to self-expression and to make choices of identity and the form of government. Similarly, recent democratic revolutions of 1989 in Eastern Europe indeed have marked a watershed in world history with the sudden downfall of long-entrenched Communist regimes throughout Communist Europe and the end of the notorious Cold War era. We are now witnessing the new post-Cold War World with democratic tide sweeping through the globe. This underlines one dominant principle of political legitimacy i.e., democracy's unchallenged pre-eminence which has today no serious geo-political or ideological rivals. The collapse of Communism, and of the so-called "peoples democracies", and the manifest failures of various authoritarian brands of government, have led to a drastic weakening of openly anti-democratic forces and even withering away of the anti-democratic left which is returning to free market economy and to liberal democracy. Mankind seems to be entering a sustained period of peaceful democratic hegemony of a kind of "*Paxdemocratica*" in which liberal democracy alone will enjoy popular legitimacy as the organising principle of social and political life. This development has led to the emergence of a community expectation during the past decade: that the rulers, seeking validation of their empowerment, patently govern only with the consent of the governed. The international obligation of governments in respect of democratic entitlement of their people is being stated in global legal terms defining the minimal requisites of a democratic process capable of validating the exercise of power, and an institutional and normative framework for monitoring compliance with those requisites.

A normative entitlement to democracy and electoral rights, in the sense of the right of free political expression, peaceful assembly and association, and mandatory requirement of participatory electoral process, was first enunciated in Articles 19, 20 and 21 of the Universal Declaration of Human Rights (1948). The Article 21 clearly enunciated UN Member's moral commitment to the right of all persons to

take part in government as well as in "periodic and genuine elections which shall be by universal suffrage and shall be held by secret vote or by equivalent free voting procedures". This further reappeared as a legal right with greater specificity in Articles 18, 19, 22 and 25 of the legally binding International Covenant on Civil and Political Rights (which entered into force on March 23, 1976). These articles pertaining to opinion, expression, association and electoral process and electoral entitlement are indeed a refinement of an aspect of self-determination which prescribes essential preconditions for an open electoral process as an important component of democratic entitlement. Article 25 of the ICCPR extends to every citizen the right:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representative,
- (b) to vote and to be elected by genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

These treaty-based legal democratic entitlements have been further strengthened by case reviews and monitoring of national reports on compliance and specific petitions of complaints by the UN Human Rights Committee which is authorised to monitor compliance.

Besides, the UN General Assembly Resolution on Exchanging the Effectiveness of Periodic and Genuine Elections, adopted on 21 February, 1991 has reaffirmed and further specified the electoral entitlements embodied in Article 25 of the ICCPR by stressing the UN Member's:

Conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the government and that, as a matter of practical experience, the right of every one to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights.

This resolution also declares:

That the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others, as provided in national constitutions and laws.

Earlier resolution of the General Assembly of December 17, 1991, while declaring periodic and genuine elections as a necessary and indispensable element

and a crucial factor in the effective enjoyment of a wide range of other human rights, had established a procedure for authorising the monitoring of national elections by the United Nations and had endorsed the UN Secretary General's decision to create an office to act as a focal point to ensure consistency in the handling of requests of Member States for organising elections.

Similar quasi-legislative developments and quasi jurisprudence have emerged at regional level in Europe and Americas as well and these also have linked recognition of the democratic entitlement of people to choose their governments with the validation of right of governments to govern by the will of the people. The will of the people freely and fairly expressed through periodic and genuine elections, provides the basis of the authority and legitimacy of all governments. This constitutes self-determination in its new incarnation.

This development has been further accelerated and reinforced by parallel norm-generating activity under the regional frameworks of the Charter of American States and more dramatic developments in Europe. Article 5 of the OAS Charter establishes the duty of members to promote "the effective exercise of representative democracy". In this context, the OAS Ministers of Foreign Affairs and the OAS Permanent Council had issued a series of resolutions seeking immediate and definitive replacement of the Somoza regime in Nicaragua and installation of a democratic government in that country as well as in Haiti and Panama. On June 5, 1991 they adopted a crucial resolution reiterating the requirement that the political representation of member States be based on effective exercise of representative democracy.

Similarly, in Europe Article 3 of Protocol 1 to European Human Rights Convention has obligated the parties to undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. Thirty five participants comprising the European nations (as members of the conference on Security and Co-operation in Europe) along with Canada, the USA, and the nations of Eastern Europe, at a meeting held, at Copenhagen in June 1990, had unanimously endorsed an extraordinary Charter of Paris for a New Europe which commits them "to build, consolidate and strengthen democracy as the only system of government of our nations" and which restates the older entitlement to free expression but adds the right of every individual, without discrimination, "to participate in free and fair elections". The Charter of Paris further provides for an institutionalised process of monitoring compliance with the electoral duties of states. Clearly, these developments amount to a conclusion that domestic jurisdiction doctrine, which had hitherto shielded oppressive state practices and autocratic regimes from international scrutiny, has for all practical purposes lost its meaning.

In contrast to Europe, the Asian States, have failed to adopt their own regional statements of human rights or to form an effective regional organisation on the model of European/Americans/African Community of States with a declaration and

machinery of enforcement of human rights. They are plagued by currents of varieties of tensions and age-old political hostilities, and there are no signs of adopting an Asian Convention of Human Rights, or permitting individuals any access to an Asian Court of Human Rights in near future. The situation is far worse in the Middle East and, Particularly in the Arab World where governments are corrupt, inefficient, and persistently unresponsive to the needs of the majority of their citizens. The Arab regimes, legitimacy is eroding under the strains of shattering of Arab unity, the end of the cold war, and the populist Islamic fundamentalism which is patently anti-democratic. This means that the global trend towards more open political system is by no means immutable, and autocratic rule, or dynastic/manipulative democracies are certainly not obsolete. Yet, the call for "democracy" as a goal vibrantly resonates in all parts of the globe.

The emergence of democracy as a global democratic entitlement, and linked with human rights and fundamental freedoms, has been recently confirmed and further elaborated by the Vienna Declaration and Programme of Action on Human Rights [June 25, 1993]. It says:

Democracy, development, and respect for Human Rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

The recognition of the symbiotic linkage of democracy, human rights, and self development, implies that any denial of democracy is a cognizable violation of global community standard and, therefore, it is liable to whatever regional or UN Counter measures authorised collectively by the appropriate institutions. The fundamental principle, that government should rest on the consent of the governed, the foundation of democracy, is also the essence of self-determination. It is the imperative principle of action which the rulers may henceforth ignore at their own peril.

Thus, we see that during last nearly five decades the right of peoples to self-determination has evolved and expanded, from that of a colony or a non-self-governing territory for seeking independence and establishing a State, to the entitlement of all peoples any where in the world to have protection of collective human rights and the free choice of government, namely, democracy whereunder

human rights are guaranteed under the rule of law. The principle of self-determination has been hailed and acclaimed now as a paramount norm of legitimacy. The consistency and frequency of the language of the UN Charter, its declarations and resolutions, the coming into force of the Human Rights Conventions, and also the United Nations impact on the implementation of the right of self-determination, particularly in the field of protection of human rights and election monitoring for promoting free and open electoral democracy, lead us to a conclusion that the already strong principle of self-determination has been elevated to the status of a right, legally binding on all States and enforceable in International Law.

Since the issues of self-determination, pertaining to decolonisation, human rights, fundamental freedoms, democracy and the rule of law, are today the subject of international commitments and a matter of global concern as a foundation of the international order, it appears that there is little left in terms of domestic jurisdiction doctrine. The UNO's role in election monitoring, election plebiscites and referendums, since as early as 1956 in British Togoland, British Cameroons (1959), Western Samoa (1961) at various times in the 1980's in the US Pacific Islands, Namibia and, lately in Nicaragua (1990), Haiti (1990) the Western Sahara (1991), etc. is too well-known. But less publicised monitoring services by governmental and non-governmental observers, e.g. in post 1989 transition from communist to democratic regimes in Eastern Europe, Bangladesh (1991), Benin (1991) and Latvia (1991), also serve as evidence of popular sovereignty and the basis of international endorsement of the elected government. With the establishment of UN Electoral Commission in 1991 to assist nations, in their request, in guaranteeing free and fair elections, it appears that international electoral monitoring is likely to become and increasingly routine part of national practice, particularly where the democratic legitimacy of a government in power is in question. This monitoring however cannot remain confined to guaranteeing citizens right to vote, but must also ensure a far broader panoply of democratic rights *vis-à-vis* their governments in order to fulfil new normative expectations and specific participatory entitlements to individual citizens and people in plural democracies. However, States as yet have accepted no duty to submit their elections to international monitoring and validation, whilst corrupt and manipulative governments tend to resist election monitoring even by their own national election commission. At the same time, the system of international monitoring of elections seems to be gaining strength. Sri Lanka Government had announced that parliamentary elections which were to be held in Sri Lanka on August 16, 1994, will be monitored by a 46 member team of international observers including five from India and another distinguished Indian lawyer Fali Nariman joining as a part of the ICJ team.

The crux of whole discussion above leads to three conclusions:

1. That the principle underlying a universal democratic entitlement pertaining to participatory rights of people in shaping their civil society may not be abridged arbitrarily by any government,
2. That this principle has powered the rights of self-determination and freedom of expression, which now tend to energise the move to provide international protection for electoral rights; and
3. that self-determination of people in existing states does not necessarily imply secession, or mean independence and statehood, but rather it may be internal self-determination or self-development, thereby making a link with international law concept of autonomy which allows people to cultivate their own characteristics and initiate own political decision making process.

Notwithstanding these developments, self-determination is fraught with ambiguities and leaves many crucial questions open and unanswered. In our times contrary pressures for economic centralisation and political decentralisation pose a challenge of the epoch to mesh the centripetal forces of globalised economics with the centrifugal ones of the ethnic, cultural, religious and linguistic politics of identity generated by an incredible explosion of diversity. In the current self-determination movements have now appeared new strains of violence, destruction and civil wars which have greatly undercut its legitimacy. Militant separatism, the aetiology of minority politicisation and territorial separatism, the separatist leadership of terrorists, and the third party involvement engineering secession, all these threaten to wreak havoc with the national and world systems.

IV SECESSION, EXCESSIVE SELF-DETERMINATION, NON-INTERVENTION, AND A QUEST OF NORMATIVE SYMBIOSIS

(i) Secessionist Self-determination, A Challenge

In our era of rising aspirations of diverse peoples of religious, linguistic and ethnic communities, and assertion of human rights and fundamental freedoms by the oppressed and underprivileged people all over the world, any deliberate and systematic discrimination or denials, and repressive measures by governments concerned, precipitate a crisis within and between the new and old states. A consistent and deliberate policy of this kind on the part of the central government within a nation state with regard to any people or minority communities often results in the exodus of hordes of refugees causing onerous economic, social and political strains on the neighbouring States of refuge. When a distinct, self-defined community within a nation, compactly inhabiting a region, is alienated from the metropolitan State on the basis of

well-known indicators of income, social level, social, mobility and participation in public office that are roughly proportion to that community's population, the situation generates friction, internal conflict and a demand for secession. If the people, whether constituting a majority or a minority, are eventually pushed to the wall being left with no other option except to secede, as in case of Bangladesh, the exercise of self-determination brings into existence a new state by violent methods.

Secession in recent times has taken centre stage in domestic and international politics and has posed a serious challenge to traditional notions of governance, majority rule, and integration, as well as to territorial sovereignty, territorial integrity, and even State prestige.

On the other hand, secessionist overtones of the excessive claims of self-determination and militant separatism, with a linkage of terrorist excesses and religious fundamentalism, have posed a serious danger to the territorial integrity of even such established States that have been considered archetypes of cultural pluralism. Most of self-determination movements today have become discredited because of their linkage with foreign engineered terrorism and excessive and indiscriminate violence, and these indeed constitute a threat to the structural and socio-psychological foundations of democracy in the democratic polities. Excessive claims of self-determination stressing the right to secede and to break the existing large entities, or to replace particularly a metropolitan democratic government, work against democratisation and threaten democracy in countries that have already provided for it. Fears, that secession and separatism would mean endless fragmentation and international anarchy, have increasingly led to dissociation of the right of self-determination from recognition of a right to secede.

(ii) *International Normative Regime Against Secession*

Although "nations" and "States" are fundamentally different things, the blend of them has come to be accepted as the basic ingredient of the world order. In an era when international norms legitimise State rather than "national" sovereignty, the international community and institutions tend to defend the rights of established States against excessive claims of domestic ethnic, religious, linguistic groups seeking self-determination at the expense of the former. The legitimising principles are called into question during major systemic crises and widespread political upheavals, because there arises a conflict between the *status quo* of state sovereignty and the revolution of aspirations of disgruntled people seeking separate identity in terms of a community of sentiment or national solidarity which is claimed to be the sole criterion of nationhood since the evolution of modern nationalism.

The self-determination of people implies that apart from the fact that every one as an individual has a right to his her own government and to participate in that

government, as a people the collective right of self-development is available. As long as all of the people within the boundaries of established States have equal access to the government, and the government does not try to control any peoples outside of those boundaries, the requirements of self-determination have been fulfilled. The UN Charter clearly establishes the priority of the integrity of sub-national or ethnic groups. It affirms the principle of self-determination of peoples, but not of nations. States represent their people as individuals, not the "nations" as a separate entity. As long as a State adequately represents its people as individuals and groups, other states cannot legitimately claim to represent some of these people on the basis of language, race, ethnicity, religion or national sentiment. This emphasis in the UN Charter in favour of the cohesion of existing states, and on illegitimacy of colonial empires' but retention of colonial rather than traditional borders as the basis for the creation of new states, sought to maximise the stability of the "old" and viability of the "new" states rather than ethnic, religious or tribal ties. In doing so, the UN Charter has reflected the accepted norm that the legitimacy of States was based on responsive representative government rather than national self-determination. Fears, that secession would mean international anarchy, led the framers of the UN Charter to dissociate endorsement of the right of self-determination from recognition of a right to secede.

[iii] Complex Issues and Nonintervention

In respect of application of self-determination as a rule of law several questions arise which pose a dilemma:

Where to draw the line between legitimacy and viability? At what point is a people capable of organising and administering a government that can ensure domestic welfare and guarantee compliance with international rules? Does inviolability of existing States permit internal imperialism, or the domination of one ethnic group over others within an established State? Does sovereignty of state allow gross abuses of human rights by governments and oppression of their own populations, including ethnic/religious genocide without a substantive response from international community? Is legitimacy of a State eroded when people no longer accept the principles that suggest why they ought to obey the existing authorities? Will excessive self-determination, if applied universally, not result in proliferation of conditionally viable and ineffective States? Will it not ignite domestic and regional confrontation in cases even where conflicts of State interests do not necessarily exist? If juridical States and UNO cannot legitimately interfere in the domestic affairs of other States, will domestic ethnic conflicts more often be allowed to be decided by use of state violence against elements of their own populations?

These are some of the questions which have placed the conservative inter-State system in an awkward position when the United Nations and regional intergovernmental organisations are to interpret self-determination in such a way as to condone, or render justifiable, threats to the territorial integrity of their member States. Clearly, the inter-state system, which evolved after the Second World War, has upheld the interests of its component entities and their territorial integrity is reinforced by the principle of non-use of force, by the concept of inviolability of frontiers, and by the principle of nonintervention which is defined in practice as a ban on intervention against a State, including support for secessionists and other insurgents. Even humanitarian intervention has not been universally accepted as a justifiable pretext for coercive intervention in the situation of human right violations. Not only, that seceding entities are deprived of humanitarian reliefs they are not recognised by International law of our times as insurgents or belligerents, and rarely as liberation movements.

Besides, in contrast to the League of Nations System, the UNO has pushed the rights of minorities in general into the background and has instead emphasised individual human rights in international law evolved after 1945.

Exercising the right of self-determination need not always involve secession if some degrees and forms of self-rule are available to people. But self-determination, as an unlimited right of every ethnic, tribal, religious or linguistic group or people, whenever it so desires to secede, requires to be domesticated and limited in such a way as to avoid dismemberment of heterogeneous multi-cultural societies and international instability which is incompatible with the secure enjoyment of basic human rights.

It is impossible to sustain the notion, that every ethnic, tribal, linguistic or religious group can find its expression in a full-blown nation-state, because this process of fragmentation and the breakdown of existing States will then never be exhausted. Secession as a unilateral act for independence in opposition to the metropolis, does not conform to the tenets of international legitimacy under prevailing international legal system. The inter-State conservative order does not interpret self-determination in such a way as to condone or render justifiable any threat to the territorial integrity of sovereign States. The solution of subtle differences in geography, religion, language, and culture within a heterogeneous State and its numerous enclaves lies, not in secession but in more local autonomy and more democratic federalism in order to prevent its disintegration. Furthermore, economic disadvantages of fragmentation into smaller economies call for the large multi-ethnic State. Economics and its globalisation have recently moved many countries to form economic unions like European Community. However, it is important to come to grips pragmatically with the problem of excessive self-determination since it is on the political agenda across the globe.

There may be exceptional cases of compelling justification for secession on the ground of rectificatory justice for people who are victims of deliberate discriminatory redistribution

at the hands of State, or are victims of cultural and demographic aggression and even genocide as has been a precedent of the then East Bengal of Pakistan which seceded to be internationally recognised as Bangladesh as a result of defensive intervention of India. The uniqueness of Bangladesh (East Bengal) among other factors, was its more than 1000 mile distance from the western wing of Pakistan, its exploitation and oppressive discrimination and maltreatment like an internal colony, its practical inability to govern Pakistan despite Bengalis being in a majority in the country and, last but not the least depriving their leader Sheikh Mujibar Rehman his legitimate right of forming government at national level after their Awami League won the elections. Instead, what they got was the onslaught of the Pakistan army and a worst form of genocide in recorded history. They were denied not only their legitimate claim to govern the whole Pakistan but also any autonomy and so were left with no option and they chose secession.

There has been a limited debate on secession from the federal systems until the recent upheaval in Yugoslavia and the disintegration of the then Soviet Union. Even the federal constitutions providing for possibility of secession (only three did so, the then USSR, Yugoslavia and Burma) set almost insurmountable abstractive rules and undermined the operative part.

The normative regime against secession and its rigid application in practice have not been effective deterrent and secession persists unabated. This accounts for a view which favours a qualified right to secessionist self-determination in place of absolute prohibition on secession. On the other hand, giving a free rein to secessionist self-determination is indeed fraught with serious problems as it will open up a Pandora's box of self-determination *ad absurdum*.

(iv) A Quest For Normative Symbiosis

Self-determination on one level has domestic aspect involving in each case centrifugal forces within a single State. But its origins and implications can only be understood in international context. Domestic aspect is, widespread disaffection and dissatisfaction with the inefficiency and remoteness of the large-scale bureaucratic State which fails to respond to the needs and aspirations of the people. The external aspect is, that plurality of cultural, ethnic, religious and linguistic loyalties and power centres within society make it possible for new groups of people to break upon the political scene, find external allies, and engender fragmentation of existing states. The unprecedented aggressive politics of human rights, religious fundamentalism and cultural revivalism, global phenomenon of terrorism, and terrorist States fighting a proxy war through secessionist self-determinists, and the *Jihad* of militant mercenaries provide new global dimensions of breaking up the encompassing societies. From global point of view, it is impossible to sustain the notion that every religious, ethnic group can find self-determination in a full-blown nation state to have a seat in the United Nations as this process will never be exhausted. Excessive self-determination

movements, linked with foreign engineered terrorism, threaten democracy by chipping away at its structural and socio-psychological foundations.

The ultimate purpose of self-determination is not necessarily secession or independence because world community cannot disintegrate into thousands of individual units. It is always necessary to analyse all the circumstances to arrive at a substantial political answer. In existing States, this right is internal self-determination of people to have a self-rule and a responsive government, mutual respect between diverse religious, ethnic, linguistic and ethnic groups within existing nations, and a functional pluralist democracy which provides socio-psychological bases of compromise on differences between different communities with a view to enriching the cultural, mosaic. The preservation of a democratic national community does not necessarily demand assimilation, nor heartless elimination of minorities and out-groups, though it does require that some basic limits be placed upon them with a view to bolstering national unity and integration.

A polity, that places a pre-eminent value on liberty, self-rule, free expression, and autonomy; that highly values diversity; and that holds legitimate political authority in some sense resting ultimately on the consent of the people, may even recognise a limited right of secession within a well defined scope and through rigid constitutional mechanism. Alternatively, such a polity must come forward with weighty arguments, to establish before international community why a right of secession for any separatist segments has no justification because of effective and functional forms of political association which demonstrate a wide range or types and degrees of self-expression enjoyed by the people of the segment concerned. In such a polity, dissatisfied groups will not be faced with the stark choice of either remaining in a condition of total dependence on the centralised state, or taking the drastic action of seceding to form their own sovereign state. In proportion the aspirations for self-determination of all peoples are met by satisfactory measures to safeguard their identity and human rights, a right to secede diminishes. On the other hand, to the extent the self-determination movements are linked with violence and terrorism patronised and engineered by a foreign state, with a view to causing fragmentation of a polity, these exhaust their legitimacy as a means to create self-proclaimed more strong democratic States.

It seems that the original revolutionary concept of national self-determination, articulated and recognised in the context of colonialism, has now undergone during last two decades fundamental changes. The right of self-determination today is no larger deemed to be confined to colonial situations, nor has it exhausted with the end of colonialism. Its basis is also not ethnic, cultural or 'national' separatism. In the post-colonial and the post-cold-war era, the right of self-determination has been extended to majorities of peoples subjected to institutionalised racism, as in South Africa, and to the peoples under oppressive and autocratic governments as in west Asia and several Latin American and African States as well as in the remaining so

called Peoples democracies. This right is also available to minorities, ethnic religious or other sub-national groups seeking self-rule and self-development on the basis of being distinct. But this right has no legitimacy if in the name of people senseless and disastrous violence and terrorist acts reduce the claims of self-determination to the spectre of chaos and anarchy.

In a democratic polity, cultural pluralism is regarded as essential and a core attribute that entails commitment to: not merely toleration but genuine respect for the diverse cultures; protection and promotion of the fundamental rights and freedoms as well as the identity of culturally distinct minorities, and fulfilment of their legitimate aspirations within the larger political community. If minorities enjoy a meaningful self-rule, genuine form of autonomy, or other forms of devolution and equality assessed on the basis of well-known socio-economic indicators and participation in public offices that is roughly proportionate to a group's population, and also that there exists a self-regulatory mechanism of resolution of differences, then these indeed are deemed to serve the implementation of the right of internal self-determination in a fullest sense through self-government.

As long as pluralism exists and flourishes within a federal system, and enriches the cultural mosaic of minority groups and other subgroups, it provides the foundation of democratic pluralism by accepting those values which are embedded in the shared national constitution.

A degree of meaningful self-development for all minorities, under a genuine national policy of minority rights and similar policy of self-rule and development for indigenous peoples' rights and protection, and constitutional provision of autonomy and other forms of political association, devolution, or federal arrangement suitable for autonomy-minded minorities with a strong territorial base are indeed the core conditions to foster experiments in degrees of self-determination of peoples. In those cases where the population of a State is not homogenous and the polity has not been able to provide for meeting these conditions in an effective functional democracy, the sovereignty and territorial integrity will certainly be endangered by the concept of secessionist self-determination despite off-quoted UN General Assembly resolutions which prohibit States to "refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country" (UN GAOR 1970, on Friendly Relations) in compliance with the principal of equal rights and self-determination of peoples.

However, two crucial questions arise: Is claim of self-determination of any people seeking secession or independence, prohibited in the case of a multi-cultural/ethnic democratic state but permitted in an autocratic or non-democratic one? Is it enough for a pluralist/heterogeneous state, in order to be considered fully complying with principle of self-determination, to have a democratic government representing the whole population?

A close look at the principle of self-determination of people reveals that the first and foremost problem is ambiguity about definition of "people". The term is widely used in International law, but not defined because the term "people" can scarcely be filled with any legal substance. Its explanation contains semi-legal concepts of linguistic community, cultural community and historical community. Since the notion of "people" is not objectively definable in international law, it introduces an element of subjectivity which has caused unprincipled conceptual incoherence and ambiguous state practice. Even though the UN charter as well as domestic legal system of many states have used the expression "peoples" or equivalent expression on native affairs, no substantive development has taken place in International or national laws of objective criteria for defining a population as a "people" as distinguishable from other peoples. However, if a large group of people inhabiting a common territory as a compact mass are linked by one or more specific common features of cultural, linguistic, religious or other nature as a social entity with a clear identity, such a population may constitute a "people" entitled to collective right of self-determination in order to decide on their own political status without any external interference and to control their economic, social and cultural development. There is still no international consensus on what constitutes the best definition.

In the practice of States, the people of Katanga seeking secession from the present-day Zaire (in the then Congo Leopoldville) and the people of Biafra from Nigeria were not welcomed, whilst the people of the then East Bengal were recognised when Bangladesh was admitted to the UNO. Recent developments in Yugoslavia and former USSR, resulting in secession and disintegration of these States, have not clarified the attitude of international community as the breakaway States are hardly more democratic than those they have replaced. The people of Tibet and Inner Mongolia may well be justified to break away from the remote, imposed, exploitative and undemocratic Chinese Empire. The Kurdish people may be entitled to internal self-determination by having self-rule and a responsive government, failing which to be free and independent from tyrannical Iraq and authoritarian Iran. Should the people of Kashmir, the Punjab, Nagaland and Bodoland be encouraged to break-up the democratic Indian polity into hostile, undemocratic and potentially warring territories, or should they be allowed more autonomy and effective self-rule? The peoples of India, desire and indeed deserve a government that is more responsive to them and can guarantee territorial integrity and political stability of the Republic of India, but not necessarily one which brings about disintegration of the social fabric and creates anarchic situation.

The contradiction between the right of a State to protect its territorial integrity and the right of a people to self-determination, which includes the right of secession and formation of an independent State, can be overcome by the concept of internal self-development and self-government and establishment of effective autonomy for the entity striving for independence. In view of the ethnic revival, and religious

fundamentalism posing a serious challenge to the integrity of multi-cultural States comprising many ethnic/religious communities, a compromise, which can at least partially satisfy the aspirations of the various groups or minorities, lies in decentralisation of power, both of the central government as well as of the regional or other local authorities. The internal aspect of self-determination of peoples striving towards more democracy self-rule for cultural identity, self-preservation and self-development, has legitimacy for global support. However in the following core situations mere promise of internal self-determination will not be enough for the survival of a people:

- a) if the culture of social entity in question is truly threatened or faces prospects of demise in the near future due to a deliberate pattern of systematic policy of discrimination and economic exploitation against a sizeable self-defined people whose relationship with a territory cannot be nullified by forcible expulsion or artificial displacement by other populations;
- b) if the distinct self-defined community within a State, compactly inhabiting a region is a victim of calculated genocide or demographic aggression;
- c) if the fundamental social, economic, cultural, or civil and political rights of this community are subjected to blatant and deliberate violations; and
- d) if reasonable compromise of political solutions are arbitrarily rejected for good on the part of the central government.

The case of Tibetan people seems to be confronted with these situations to entitle them legitimately to freedom and independence from Chinese grip.

The internal self-determination for a people on the other hand consists, in the free choice of government; namely democracy and autonomy of independent action for self-development which may hold a realistic prospect of remedy as a component part of an existing State. In more strained situations, even a constitutional provision of a limited right to secede for a self-defined people, linked with a territory under certain specified circumstances, may minimise the danger of secession if the constitutional mechanism gives some weight both to the interests in preserving majority rule and the interest of the secessionists.

As far as the existing States are concerned, one must consider seriously the dangers of less democracy in a separatist region. The merits of enhancing central government's responsiveness and allowing for some redefining of its role far outweigh the benefits of dismembering the State. This is illustrated by the success of Belgian model, which has enabled the Flemings and the Walloons to avoid the terrible fate of the people of Lebanon, by providing for a democratic government responsive to both major ethnic groups. The Belgian model has enabled the two groups of people towards more satisfactory self-development and self-rule without separation and within the framework of a shared democratic government.

Similarly, Switzerland also has provided a model of a country comprising peoples of different origins, ethnicities, languages and cultures after having fought each other for nearly 1000 years and eventually to agree on a common democratic government. Governments faced with ethnic/religious challenges of self-determination, need provide more local autonomy, more decentralisation, more de-concentration of power and authority and more democratic federalism in order to prevent dissolution. The right of self-determination in our times underlines all the paraphernalia of the right to democratic governance and it has acquired legitimacy by its closer association with a far broader panoply of laws pertaining to the human rights of persons and groups vis-à-vis their governments. The principle underlying a universal democratic entitlement to participatory rights of persons in shaping their civil society has indeed energised the right of self-determination in a new direction of self-rule and self-development which encourages international protection for electoral rights if arbitrarily abridged by governments.

To conclude, the dynamic concept of self-determination in contemporary international law, encompasses self-government, protection of human rights, democratic pluralism, and the rule of law as these are made the subject of international commitments leaving little in terms of traditional domestic jurisdiction doctrine. The normative entitlement of people to self-determination has evolved successively in three stages underlining three aspects:

- i. The first aspect is illegality of colonial rule recognising the right of self-determination to the people of colonies to liberate themselves and become independent.
- ii. The second aspect of the right underlined by the UN in the context of UN human rights law is very significant. The right of self-determination is recognised as a fundamental collective human right appertaining to all people and nations as a prerequisite of the enjoyment of all the human rights and freedoms of the individual.
- iii. The third aspect of the right recognises that the right of self-determination is not absolute, neither to be dogmatically applied seeking secession, freedom and independence of a people, nor to be seen necessarily as conflicting with the principle of territorial integrity of existing States. This aspect reiterates the principle, that government should rest on the consent of the governed which is the basis of democracy as well as of self-determination. It stresses internal self-determination for a people envisaging more political and organisational general autonomy, more democracy with a transparent participatory electoral process, and more self-governmental in cultural, religious, and economic matters.

In its current incarnation, the right of self-determination in a non-colonial situation envisages that unresponsive and non-democratic governments lack legitimacy of authority, and, on the other hand, the excessive claims of ethnic religious, tribal enclaves and other splinters of "Selves" within existing States have no legitimacy if seeking secession or independence for acquiring "nationhood". Scots and Welsh in the UK, African Americans in the USA, Quebecois in Canada, or Kashmiris in India may claim internal self-determination with more autonomy and active participation in public affairs for self-development, but certainly not secession.

The people of Kashmir have all along, since 1931 when they were subjects of a Princely State of India (never an independent State), had been struggling for replacement of autocracy by democracy. Their struggle ultimately developed into the 1946 quit Kashmir movement with National Conference in the forefront challenging the ruler's authority, demanding his dethronement and establishment of an elected government. In the wake of the Pakistani aggression, Jammu & Kashmir, like other Princely States, acceded to the Indian Dominion on October 26, 1947. Successive elected governments of Jammu and Kashmir, since Sheikh Abdullah to Dr. Farooq Abdullah, took various half-hearted measures to set up democratic institutions and on January 26, 1957 the peoples representatives in the State's Constituent Assembly adopted a new Constitution recognising the peoples right to shape their political, administrative and economic policies. However, the misrule and bureaucratic bungling and the denial of legitimate expression of popular will, as also in some other parts of India, led to the alienation of the Kashmiris, which has been advantageously exploited by theocratic Pakistan in order to flame up religious fundamentalism and engineer terrorist acts and communalization of public life. The claims of numerous Kashmiri militant outfits, with conflicting demands based on religion against Secular India, have no legitimacy and these have to be evaluated in full historical, and geo-political background.

In contrast, from international law viewpoint, the claim of self-determination of six million peaceful Tibetan people, who are struggling for their very survival and preservation of distinct identity in occupied Tibet, is a case of liberation and secession from the remote, imposed, authoritative, exploitative and undemocratic Chinese Empire. Under the enlightened and spiritual leadership of Dalai Lama, the Tibetan people of the homeland and hundreds of thousands refugees abroad are asking with one voice, peacefully and by nonviolent methods for the exercise of their right of self-determination in the context of large scale genocide, and demographic and armed aggression perpetuated respectively by five million alien Chinese civilians and 300,000 Chinese Han Troops which have reduced indigenous Tibetans in their own homeland to a small insignificant minority. They have neither a possibility of self-government, nor of any kind of democracy and responsive government in the near future. The case of Tibetan people against China stands in stark contrast to

that of Kashmiri militant outfits who are supported by a third party which remains in illegal occupation of a part of Kashmir of Indian territory as an aggressor because India committed historical blunder of taking the matter to the United Nations instead of first vacating the aggression.

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2. THE RIGHT OF SELF-DETERMINATION OF THE TIBETAN PEOPLE, APPROACHES AND MODALITIES

B.C. NIRMAL

PART I: THE CONCEPT

Professor Dhokalia's scholarly paper is a thorough review of the evolution over the last half century of the right of self-determination. It addresses many difficult and unanswered questions pertaining to self-determination and provides a new perspective for delineation of the concept in the post-decolonisation and post cold-war era. At a time when the humankind is facing the problems of ethno-nationalism, separatism, fragmentation, narco and nuclear terrorism and religious fundamentalism, the need to contain the revolutionary and secessionist potential of the concept of self-determination has acquired an unprecedented urgency. Certainly, sovereignty and self-determination are of great value and importance, but as the Report by the UN Secretary General 'An Agenda for Peace' warns, they must not be permitted to work against each other in the period ahead. Professor Dhokalia's thoughtful paper suggests an interesting framework in which a harmonious balance between these conflicting concepts can be realised. I propose to comment on three main issues — defining "Self", "*Meaning of self-determination*", and "*Methods of self-determination*".

1. DEFINING PEOPLE'S

Right to self-determination is a right of all 'peoples' without any distinction but what constitutes a people is a highly complex issue. Though the term 'peoples' has been

* The three Papers submitted at the two Workshops by Prof. Nirmal have been merged into one Paper.

used in the UN Charter and international and regional human rights instruments, there have been no substantive developments in national or international law of objective criteria for defining a group of people as a 'people' distinguishable from other peoples. Scholars and jurists have defined the term in terms of three common features, viz. common language, common culture and common fate (linguistic community, cultural community and historical community). It has been also suggested that, to be designated as a people, a group of people must be large in number and inhabit a common territory as a compact mass linked to one or more specific common features of national, cultural, linguistic, religious bond, common history, economic and social life and even state power. So construed the term people refers to a social entity having a clear identity and its own characteristics and a relationship to a territory. Such territorial relationship can not be nullified by the forcible expulsion or artificial displacement by other peoples.

But the difficulty with this generalised approach is that it hardly offers any worthwhile guidance in assessing the relative merits of conflicting and sometimes overlapping claims to self-determination. For example, whether or not the people of South Ossetia in Georgia are entitled to exercise a right of self-determination by uniting with their northern kin in Russia. How should the claim to self-determination by the Armenian enclave in mountainous Karabagh in Azerbaijan be dealt with? Again, whether the Azeri province of Nakhichevan separated from the rest of Azerbaijan by Armenia has a right to self-determination? Similarly, what should be the fate of an artificial creation such as the Republic of Moldova which contains a 2.5 million majority population ethnically, linguistically and to a large extent historically linked with Romania? Whether claims of ethnic, religious, tribal enclaves and other splinters of 'selves' within existing states to self-determination has any legitimacy under international law is problematic. Again whether Scots and Welsh in the UK., African Americans in the USA., Quebecans in Canada, or Kashmiris in India may claim self-determination.

In the absence of any objective criteria for determining the relevant 'self' in a given concrete case international lawyers face serious and practical difficulties in addressing these issues. There is no doubt that the United Nations has succeeded in dealing with the subject of the right of self-determination in the context of decolonisation by recognising colonial territory as a legal relevant unit entitled to self-determination but the problem is that the territorial integrity of existing states itself is being challenged by the claims of minorities (and in some cases majorities) to self-determination and statehood.

The distinction between a 'people' and a 'minority' has been the core of most juristic discussion on the determination of a 'self', which is entitled to determination in non-colonial situation. While a people is entitled to self-determination, a minority is not. But as David Makinson has aptly remarked it would be a confusion of thought to see the term 'people' as a simple opposite of minority, partitioning the domain

of collectivities. Until the United Nations clearly defines the holders of the right of self-determination, to deny it to a minority does not seem to be justified. The inconsistency in this approach becomes more evident when one observes the willingness of the United Nations to acknowledge in some cases the peoplehood of an ethnic group when it adopts a strategy of armed struggle to become a national liberation movement. This is certainly a self-defeating attitude and undermines the very legitimacy of the concept. For self-determination to be applied coherently as a law it is necessary that the issues of peoplehood and minority are addressed from a broader perspective.

It must be borne in mind that recognition of a minority is on the basis of conscious cohesion linked with religion, language, culture, tribe or cultural distinction from the majority of the population, and their rights are categorical rights to be exercised by members of a minority in individual capacity and as a class of individuals. Thus, the notion of a minority is relational. In fact the problem of differentiating between groups as a people and as a minority, though difficult and controversial, is a simple question of line-drawing which is, of course, essentially a political act. Depending on where the dividing line is drawn, an ethnic religious or other community aspiring to nationhood can become either a people entitled to self-determination or a minority, with only the minimal rights guaranteed under international law. Against this background the definition of 'people' proposed by the Secretariat of Unesco appears to be a practical one. The formulation refers to a people as 'people' proposed by the Secretariat of Unesco appears to be a practical one. The formulation refers to a people as 'a group united by certain cultural or political institutions in the public and occasionally private domain'. This definition broadens the notion not merely to peoples under foreign domination, but peoples in general and this obscures the distinction between 'people' and 'minority'.

Any debate on the definition and concretisations of the peoplehood cannot fail to take cognizance of the fact that peoples today are constituent elements of international community and subjects of international law. This is the proposition of UN Charter and the Universal Declaration of Human Rights, as such they are subjects of international law. Peoples constitute a legal framework with a sufficient defined collective identity and a totality of rights whose implementation is deemed necessary to ensure the dignity and full development of individuals comprising a community.

When the question of peoplehood is viewed from this perspective it becomes evident that the understanding of peoples cannot be limited to the people-state or nation-state as such but must encompass the life of diverse peoples in a territory of a given state including local communities and intermediate groups of varied nature to enable them to enjoy collective human rights and democratic entitlements with a fair electoral process as a prerequisite of all other human rights embodied in the International Covenants on Human Rights as well as in national constitutions of democratic states. This appears to be the message of the 1976 Declaration of Algiers

on the Rights of People. The Declaration takes cognisance of infra-state people, the ethnic minorities, sub-nationalities comprising the people of the state. The I.L.O. Convention No.169 of 1989 and the Draft Universal Declaration of Right of Indigenous Peoples too have moved towards the recognition of indigenous communities as a people and of their collective rights. African Charter also does establish and assume from the start an indissoluble link between human rights and the rights of peoples because Africa has a decentralised structure with a certain autonomy.

It must be duly recognised that the 'peoples' rights are integral part of the principle of political legitimacy defined by the United Nations. These rights necessarily involve consideration of essence of life, security and all aspects of the nature and function of authority, democracy, popular sovereignty, culture, development and the characteristics of social and political institutions needed for the protection of these realities. This requires a fundamental agreement on the politics and structure of national as well as international societies to enable the UN to agree on the concept of people, minority, or other ethnical/indigenous populations. In fact, the logic of universality flounders on the diversity of peoples and ethnic, cultural, linguistic and religious communities. For this reason the United Nations has disassociated the question of indigenous autochthonous populations from that of minorities, because in reality the autochthonous populations often constitute the oppressed majority of population. For example, in India in comparison to other minorities indigenous populations are more oppressed and may constitute a majority.

The foregoing discussion leads us to the inescapable conclusion that the notion of people ought to be advanced as an area in which liberty, self-government, self-development is created in the context of a specific reality and which ensures the pursuit of human liberation from discrimination, oppression, genocide, autocratic, and non-democratic rule according to the terms and conditions of that community's liberty.

If self-determination is viewed not as a right but as a remedy against oppression, discrimination, deprivation of human rights, and anarchic rule, the complex problem of the determination of the relevant 'self' will be reduced to a manageable affair. Depending on the nature and severity of deprivation of a group's human rights and the degree of unresponsiveness and unrepresentativeness of the government concerned, the claimant group may be regarded the beneficiary of external or internal self-determination. Since colonial rule entails large-scale oppression, discrimination and genocide and represents most grave forms of violations of human rights, the United Nations recognised the colonial peoples as the first and foremost holders of the right of external self-determination to facilitate their liberation from the colonial domination. But external self-determination is ordinarily not within the range of entitlements of component ethnic groups of existing states. International law recognises the right of the people (population) of a territory, incarnated after

independence to territorial integrity, which other states must respect. And state's own citizens and component ethnic groups are under legal duty not to disrupt the territorial integrity of the state. Since their aspirations for self-determination can be adequately met by satisfactory measures to safeguard their identity and human rights, they do not need external self-determination.

This approach finds support in the opinions of the European Community's Arbitration Commission. In response to the question whether the Serbian populations of Croatia and Bosnia-Herzegovina have the right to self-determination the Commission opined that the right to self-determination is not well defined under International law. As it stands it can not affect the location of boundaries (*uti possidetis*). The opinion, however, recognised that self-determination conferred the right on religious, ethnic or linguistic groups to have their identity recognised. The imperative norms of international law imposed on all of the republics a duty to afford the members of the minorities and ethnic groups all the human rights and fundamental freedoms recognised in international law including, when appropriate the right to choose their nationality. The relevant rights in the instant case, the Commission said, have been enumerated in the Draft Peace Treaty of Yugoslavia, accepted by the Peace Conference on 4 November 1991, the provisions of which constitute *jus cogens* norms. Viewed from this perspective, the excessive claims of ethnic, religious, tribal enclaves and other splinter 'selves' within existing states have no legitimacy if seeking secession or independence. Scots and Welsh in the United Kingdom, Quebecans in Canada and African Americans in the USA. may claim internal self-determination in the sense of human rights and active participation in public affairs, but certainly not external self-determination. At a time when the world is confronted with the problems of religious fundamentalism and cultural revivalism, global phenomenon of terrorism, and terrorist states are fighting a proxy war through secessionist self-determination and the *Jehad* of militant mercenaries, to recognise the entitlement of such groups to external self-determination will have disastrous consequences for the existing international system.

It must be borne in mind that most of the present self-determination movements are engineered by outside forces. In this context the UN has stressed the importance of freely expressed views of the peoples concerned. Its opposition to Katanga's secession was in a large measure based on the judgment that it was something engineered from outside vested interests and implemented by outside mercenaries. The same can also be said about the claims of numerous Kashmiri militant outfits to self-determination. Self-determination movement in Kashmir Valley is neither a popular demand nor is supported by the indigenous population of Jammu & Kashmir. Thus it does not have any support in Jammu and Ladakh and even lacks support of majority of the population in the Valley. The movement is being abetted, financed and supported by a neighbouring country which is fighting a proxy war in Kashmir through local Kashmiri militants and foreign mercenaries.

In view of these facts Kashmiris' claims to external self-determination have no legitimacy under international law. So long a State represents the whole people belonging to its territory without distinction of any kind its territorial integrity is immune from secession under international law. Since Jammu and Kashmir is an integral part of India and its population has been guaranteed human rights, equality, rule of law, democratic entitlement and even special status in the Republic under the laws and constitutions of the J&K and India, the implementation of self-determination is fully served in this case. Therefore, Pakistan recent efforts to espouse the self-determination claim of Kashmiri Muslims constitute an unjustified intervention in the internal affairs of India.

In sharp contrast, the claim of self-determination of six million peaceful Tibetan people' who are struggling for their very survival and preservation of their distinct identity is fully justified in view of the fact that Tibet has been an independent State throughout its history and its juridical status at the present moment is that of an independent State under the legal occupation of China. The right to self-determination in this case is not a case of secession but of regaining of its lost territory. Even assuming for argument sake that Tibet is an integral part of China, large-scale genocide, demographic and armed aggression to which Tibetan's have been subjected since the Chinese takeover of the territory in 1950, are sufficient to legitimate the Tibetan's Right to self-determination and independence.

As noted earlier, the present-day international law is not oblivious to the situation of national minorities and in extreme situations may allow dramatic encroachment upon the sovereignty of the territorial state to protect them. The establishment of 'safe havens' for Kurdish refugees within Iraqi territory first by coalition forces and then by UN guards illustrates the point. On the basis of this it is plausible to argue that the Kurdish people have the right to claim internal self-determination failing which to be free from tyrannical Iraq.

Now, turning to the question of right-holder of secessionist self-determination, it appears that geographic location and readily severability of the territory are the important elements in the determination of 'self'. Geographical distance of nearly one thousand miles between East and West Pakistan accounted in a large measure for the successful secession of Bangladesh. Biafra's claim to secession, on the other hand, was not recognised perhaps because of the contiguity of Biafra and the rest of Nigeria. In the Yugoslav episode the right to self-determination was not applied to territorially defined enclaves within formal federal entities where a minority form a local majority (Kosovo and Krajina). It was applied only to former federal entities of Yugoslavia. This episode reveals that the entitlement to self-determination accrues only to those who occupy a readily severable territory which, ideally, is already delimited by federal or administrative boundaries. The Yugoslav episode also suggests that the principle of respect for the territorial *status quo* and particularly that of *uti possidetis*, which was recognised in the settlement of problems of decolonisation in America and Africa, is also applicable in the case of secessionist self-determination.

2 PROPOSED INTERPRETATION OF THE RIGHT OF SELF-DETERMINATION

In its original version the right of self-determination came to mean the freely expressed will of peoples to be free from colonial domination. But self-determination is not static but a dynamic concept which evolves and expands in response to the changing needs of the society. In the course of its evolution it has appeared in various forms some of which are quite controversial because of disagreement either over what is meant by peoples, or over what is meant by self-determination of itself. Various forms of self-determination range from simple self-identification at one extreme to full self-determination at the other. Since the principle of self-determination in the sense of independence or secession conflicts with the similarly sacred doctrine of the protection of territorial integrity of states, the inherent tension between these two concepts needs to be relieved in order to arrive at a consensus on the meaning of self-determination in the post-decolonisation and the post cold-war era. To this end a distinction should be made between the right of self-determination as it developed in the context of decolonisation, and a proposed modern interpretation of self-determination within the bounds of a nation-state, relating essentially to the right of a people to participate in the political, economic and cultural affairs of a state on terms which meet their aspirations.

A close look at the Yugoslav episode will reveal that, in a contemporary violent ethnic conflict, to say that the principle of self-determination should be applied is to state the problem, not its solution. As Marti Koskeniemi in his recent article points out the international law of self-determination should not be seen as a set of ready-made substantive solutions but in terms of a procedure for bringing about acceptable ad hoc adjustments. Hence the most realistic approach to handle this issue is to see it not as 'one short affair' but as an ongoing process. The latter concerns the rights of groups and individuals to make meaningful choices in matters of concern to them on a continuing basis.

As the right to self-determination is a people's right its content can be better appreciated if interpreted in the light of other internationally recognised peoples' rights and human rights. When self-determination is seen as a part of the body of human rights it signifies human rights and minority rights of minority groups within a larger political entity. The states with the duty to guarantee minority rights recognised in Article 27 of the Covenant on Civil and Political Rights and in the General Assembly's 1992 Declaration on the Rights of persons belonging to national or ethnic, religious and linguistic minorities. If people belonging to national or ethnic, religious minorities enjoy equality and human rights they are not likely to claim secession nor placing themselves at the mercy of other states as refugees.

In a situation, where a state denies a people participation in social, economic, political and cultural life of the society, right to self-determination requires States to become representative as in the case of Southern Rhodesia, Transkei and Southern

Africa. In its new incarnation, right to self-determination means freedom to choose one's own form of government, or even more sharply, the right to a democratic form of government, as in Haiti. It is relevant here to note that in the *Western Sahara* case, the I.C.J. held that the exercise of the right of self-determination, 'requires a free and genuine expression of the will of the peoples concerned' [*I.C.J. Reports 1975*, 32 (para 55)]. The idea that self-determination also contains this 'internal aspect' is implied in the G.A. Characterisation of the UN operation to arrange 'free and fair elections' in Cambodia in terms of the exercise by the Cambodian people of its right of self-determination (*U.N.G.A. Res. 46/18 of 20 Nov. 1991*).

The General Assembly resolution 45/2 of 10 Oct. 1990 on UN electoral assistance to Haiti also supports the idea of internal self-determination. It speaks of the Haitian people's 'right to participate freely in the determination of their own destiny without any external interference'.

The break-up of former Soviet Union into a number of new republics and the division of Czechoslovakia into Czech and Slovia republics, of course in peaceful manner, provide credence to the idea that the right of divided states (peoples) to renunciation is included in the right of self-determination. The right to self-determination may also include the idea of autonomy, self-government and self-management within the framework of existing states. Articles 3 and 29 of the Draft Universal Declaration of the Rights of the Indigenous peoples have accorded the right to autonomy and self-rule to the indigenous peoples. If limited but genuine autonomy were granted to groups defined territorially or by common ethnic, religious and linguistic bonds it would fully serve the implementation of the right of self-determination.

In extremely rare cases where deprivation of human rights is very severe and secession appears to be the only remedy to save a people from genocide and other grave forms of violations of human rights, or where sovereignty over the territory is in dispute a claim to external self-determination or secession may be regarded as legitimate. Since secession undermines the power base of exact states it is unlikely to be supported by the international community. Nonetheless, both the Friendly Relations Declaration, 1970 and the Vienna Declaration on Human Rights, 1993 hold out the possibility of a remedial secession. Where a secession movement succeeds, the resulting state may be accorded membership of the United Nations as in the case of Bangladesh. On the other hand, the Turkish Republic of Northern Cyprus faces isolation in the international community because secession in this case is perceived to be illegitimate. Latterly, the international community took a somewhat more tolerant attitude to secession in as the case of former Yugoslavia.

On the basis of a close examination of these declarations Frederic L. Kirgis identifies two key variables that can serve as rough predictors for normative assessment of a claim to self-determination. These variables are:

- i degree of representative government in the state, and
- ii the degree of destabilising effect of a given claim to self-determination.

Elaborating the relationship between the two he points out that, if a government is quite unrepresentative, the international community may recognise even a seriously destabilising self-determination claim as legitimate. On the other hand, if a government is at the high end of the scale of democracy, the only self-determination that may be recognised as legitimate are those with minimal destabilising effect. Not all secessionist claims are equally destabilising. For example, if the secessionist group occupied a territory as an independent State, the destabilization posed by it may not be as great if it seeks to carve out new territory for themselves.

Apart from the above discussed variables some other factors have been suggested from time to time:

- i the identification of the group claiming the right of self-determination,
- ii the nature and scope of the claim,
- iii the underlying reasons for the claim,
- iv the degree and the extent of the deprivation of human rights,
- v the effect on territory from which secession is sought,
- vi organisation of referendum and commitment to respect human rights of minorities, and
- vii willingness to grant a certain degree of autonomy to minority groups.

3 METHODS OF SELF-DETERMINATION

Now turning to the methods of implementing self-determination claims in non-colonial situations, there are many treaty-based agencies and commissions to monitor the implementation of human rights at regional and international levels. As regards the right to democratic entitlement the United Nations has developed a machinery to provide electoral assistance on the request of member-state concerned. However, it must be recognised that the implementation and enforcement of self-determination will rest upon international goodwill and acceptance. But what should be done if such goodwill and support is not forthcoming. The case of Bangladesh graphically illustrates that military muscle may be the only means of implementation and enforcement of the right to self-determination in such cases.

Now the crucial question is: whether the people asserting the right can legitimately use force. Another related question relates to measures which states are authorised to take in support of the struggle for self-determination of entities entitled to exercise that right outside the colonial context. As regards the first issue it may be said that secessionists are probably under no duty not to use force and the government has power to use force by way of internal police measure to impose unity and a continuation of territorial integrity. The international response to the Yugoslavia's

cessations, however, suggests that central authorities are precluded from using force against the seceding entities. Even at a stage when the federal government was seeking to hold together the Yugoslavian federation, the European Community states insisted that force can not be used against the rebellious republics of Slovenia and Croatia. Not only this, the international community asserted their entitlement to take collective measures, in accordance with, and within the confines of Chapters VI, VII and VIII of the UN Charter to restrain the central authorities from using force against the seceding entity in this case. This case is unique for the reason that the protection of Article 2(4) of the UN Charter (non-use of force) was extended even to seceding entities. The case also suggests that once the negotiations regarding the secession are exhausted and an entity entitled to exercise the right of self-determination has conducted a fair, free and, if possible, internationally supervised referendum, the seceding entity enjoys elements of international personality derived from the right to self-determination. If the seceding entity has achieved effective and administrative control over its population and territory, it fulfils the criteria for statehood.

The presidential value of this case is put in question by the unique nature of the situation and also by the fact that the Yugoslavia Constitution included a provision for secession of the republics constituting the federation. It is difficult to see a situation where States would be required to refrain from the use of force against the seceding entity for maintaining their territorial integrity. As matter stands now there is no such general obligation in contemporary international law. Yet, the nascent rule enunciated in the Yugoslav episode has been explained by reference to the development of self-determination itself.

The state confronted and embattled by secessionist struggle retains its right to continued existence and territorial integrity. It holds this right against other states, so that they are under a legal obligation not to interfere on the side of the secessionists. The International Court, in the *Nicaragua Case*, observed that no general right of intervention in support of an opposition within another state, exists in contemporary international law. As is well known the principle of nonintervention is a well established principle of customary and conventional international law according to the Friendly Relations Declaration, 1970 which reflects *opinio juris* as to customary international law on the question.

Every State has the duty to refrain from organising or encouraging the organisation of irregular forces or armed bands, including mercenaries for incursion into the territory of another state.

Moreover, if a state organizes, instigates, assists or participates in acts of civil strife or terrorist acts in another state or acquiesces in organised activities within its territory, it commits a violation of the principle of nonintervention. According to this resolution participation of this kind is contrary to the prohibition of the use of force when the acts of civil strife referred to 'involves a threat or use of force'.

In the same resolution a very similar rule is also to be found: Also, no state shall organise, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

In addition to the rules quoted above, the response of the European Community, the CSCE and the United Nations to secessionist struggles in the territory of the former Yugoslavia suggests that intervention on behalf of the secessionists is impermissible under international law. In adopting a general and complete embargo against all sides, and also in calling on all states to refrain from any action that might contribute to increasing tension, the UN Security Council further strengthened the presumption that military assistance to militants are impermissible.

In view of the foregoing the acts of omission and commission on the part of Pakistan in Kashmir in the name of self-determination of Kashmiris not only constitute a flagrant violation of its nonintervention obligation under international law but also amounts to a breach of the principle of non-use of force. Its activities constitute an armed attack or at least a breach of the principle of non-use of force, which at least could justify the use of force of appropriate countermeasures by the victim states, India. Considering that, the Security Council has given an extensive meaning to the threat to international peace and security which is necessary for bringing into play Chapter VII of the Charter by linking it to the fundamental norms of self-determination, human right, humanitarian law and the prohibition of the use of force. The UN enforcement action against Pakistan will be justified. It is relevant here to note that in the case of Libya, alleged Libyan responsibility for international terrorism was brought within the ambit of the Charter in S.C. Resolution 748 (1992) by linking it to Article 2(4) of the Charter in accordance with which "every state has the duty to refrain from organising, instigating, assisting or participating in another state..." The relevant Resolution determined that 'the failure by the Libyan Government to demonstrate by concrete action its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests in resolution 731(1992) constitute a threat to international peace and security'.

For holding a terrorism sponsoring state responsible under international law it is necessary that the terrorist activities are imputable to it. The case of Libya, however, presents a novel precedent in this regard. The Security Council Resolution 748 (1992) by which select measures against Libya have been instituted, states 'that the Libyan Government must now comply without any further delay with paragraph 3 of resolution 3 of resolution 731 (1992) regarding the requests contained in documents S/23306, S/23308 and S/23309'. These documents request Libya, *inter alia*, to accept responsibility for the actions of 'Libyan Officials', i.e. agents of the Libyan state, and require it to surrender these persons and to pay appropriate compensation. It is interesting to note that the two Libyans allegedly involved with the bombing of the Pan Am Jet Flight (103) on 21 December 1988 over Lockerbie, have been

termed in these documents as 'Libyan Officials' and the Libyan responsibility for their actions has been recognised. What is more curious is that these documents emanated from the governments of France, the United States and the United Kingdom and the Council by referring to these documents without further specifications, endorsed the findings of individual member states concerned. The resolution holding Libyan responsible for international terrorism although the two Libyans are yet to be adjudged guilty and that they were acting for and on behalf the state of Libya is yet to be established represents a dramatic departure from the established state practice.

A powerful case could also be made for attributing individual criminal responsibility to all those persons who commit or order the commission of acts of terrorism. Though for long the Council did not opt for the individual responsibility, recently its action has entered in the field of individual criminal responsibility. For instance, in a recent resolution it called for the establishment of an international criminal tribunal for the prosecution of persons responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991 (Resolution 808 (1993)).

To sum up the norms laid down in the resolutions discussed just above are very much relevant to the global fight against the monster of international terrorism.

PART II: TIBET AND THE RIGHT TO SELF-DETERMINATION

1. There exists a close resemblance between the cases of Tibet and Kuwait. Both the states came under the illegal occupation of the neighbouring states (China and Iraq respectively), but while Kuwaitis were enough to regain their statehood, fortunate because of the military action taken against Iraq under the leadership of the United States in pursuance of Security Council resolution 678 (1990), the Tibetans' struggle for sovereignty, statehood and self-determination still continues. China is still in occupation of the Tibetan territory since more than three decades. Following the Sino-American agreement, China has emerged as a great Asian power and as a permanent member of the Security Council it is in a position to thwart the adoption of any resolution on the Tibetan question in the Security Council.

Despite these constraints the validity of Tibetan's claim cannot be denied. If it can be established that on the critical date 1950, the date on which Chinese troops invaded Tibet and occupied it, Tibet was an independent state which many studies clearly show, then the Chinese occupation of Tibet becomes not only illegal but it even constitutes "aggression". Such illegal acquisition of territory is impermissible under the UN Charter, the Friendly Relations Declaration, 1970 and the Definition of Aggression, 1974.

A close parallel can also be drawn between Tibet and the Baltic Republics which have very recently exercised their right to self-determination in the form of attainment of statehood. The Baltic republics, it may be noted, insist on what is called the 'continuity thesis' — the view that they have now only recovered the statehood that had existed during the inter-war years and been suspended since the illegal Soviet occupation in 1940. It has also been argued that the artificial and imposed character of the Socialist State in the former Soviet Union and the Eastern European Countries such as Yugoslavia and Czechoslovakia attempted to undermine the identities of various nationalities and the extinction of the institutionalised Marxism and Leninism in these territories has opened the way for the nation builders to restore the authentic communal identities that state collectivism under the Communist party had aimed to destroy. These arguments can also be made in the context of Tibet.

Viewed from this perspective the Tibetan's claim for self-determination is not a case of secession; it is a case of liberation from the illegal occupying power. It is not a demand for the creation of a new state but for regaining the lost territory. For this reason, the definition of 'self' or 'peoples' should not create any difficulty in this case because here the claimant of self-determination is a state and not a people whose authenticity need to be established in terms of the modern paradigms of international law.

2. Now turning to China's claim to sovereignty over Tibet on the basis of historical claims, the United Nations is very much cautious in ascribing weight to assertions based on historical considerations. It is thought that once historical issues are injected, it is extremely difficult to decide on how far back to trace the history. While the occupying/colonial power is apt to invoke past cultural and religious ties, the competing claimant may base on the centuries or millennia prior to colonial/military control. The paper prepared by the TPPRC graphically illustrates this point in the context of the legal position of Tibet. In the *Western Sahara* case the World Court held that the claims of historic title of Morocco and Mauritania to Western Sahara did not override the Western Saharan people's right to self-determination. The Court stressed that the paramount consideration must always be the will of the people. It made it abundantly clear that even where prior legal ties were established, consultation of the will of the people is an essential prerequisite to self-determination. As Tibetans were never consulted either before or after the occupation of their territory, China's arguments based on historical claims are unjustified both in law and practice.

3. As regards the Chinese argument that Tibet was under its suzerainty, it might be argued that at no stage in its history Tibet was under the suzerainty of China. As a matter of fact suzerainty and protectorate are the inexact terms to describe the priest and the disciple relationship. As is well known the concept of suzerainty presupposes suzerain and vassal relationship which must have been established under a treaty,

convention or other instrument. A vassal state possess internal sovereignty but its external relations are conducted by the suzerain. The vassal state is normally bound by agreement concluded by the suzerain state. A declaration of war by the suzerain state implies a situation of war even for the vassal state. Similarly, a vassal state cannot remain neutral in an armed conflict between its suzerain and a third power. The history of the relations between 'China' and 'Tibet' clearly proves that Tibet never surrendered any power of sovereignty over the territory to China. It did not at any time confer on China the right to control its foreign relations. It may also be interesting to note that in 1942 Tibet insisted its neutrality in China's war with Japan. What more proof is needed to establish that Tibet has never been a vassal state under the suzerain of China. Even the nominal sovereignty of dubious nature which China might have exercised over Tibet came to an end when Tibet declared its independence after the outbreak of the Chinese revolution in 1911. Since 1911 Tibet for all practical purposes enjoyed full independence. Since then Tibet had exercised exclusive sovereign authority in domestic affairs within its territory until the Chinese invasion in 1950. It also conducted, independently its foreign relations with other neighbouring countries.

4. Even assuming for the argument sake that Tibet is an integral part of China, there are sufficient grounds to justify the assertion of the Tibetan's claim to sovereignty. The situation in Tibet can be described in terms of internal colonialism and a systematic and premeditated human rights violations on a large scale. From these facts it emerges that the Tibetan's claim for external self-determination is fully justified in terms of the relevant standards which have evolved over the years in this regard, viz. de-stabilizing effect on the claim, representatives of the government and extent of deprivations of human rights.

5. The least Tibetans are entitled to seek is internal self-determination in the sense of respect for human rights and autonomy or self-government. In fact under the Seventeen point Agreement of 1951, certain degree of autonomy was promised to Tibet but China has not honoured this promise. It must be noted that under that agreement China gave a number of undertakings, viz. promises to maintain the existing status and functions of the Dalai Lama and the Panchen Lama, to protect freedom of religion and the monasteries, and to refrain from compulsion in the matter of reforms in Tibet. But, instead of fulfilling these and other obligations, China has unleashed the policy of genocide, oppression, terror and demographic aggression against Tibetans resulting in the exodus of a large number of Tibetans as refugees. The international community should persuade China to grant autonomy to Tibetans.

6. There are four possible approaches to deal with the Tibetan's right to self-determination:

- i Decolonisation approach;
- ii Human Rights approach;
- iii International peace and security approach; and
- iv Negotiations between China and His Holiness the Dalai Lama

PART III:

SELF-DETERMINATION OF TIBETAN PEOPLE: APPROACHES AND MODALITIES

1. LEGITIMACY OF TIBETAN'S CASE FOR SELF-DETERMINATION AND ITS LEGAL IMPLICATIONS

Modern International law recognises the juridical status of the right to self-determination. This status is enshrined in the UN Charter, common Article 1 of the Covenants on Human Rights and numerous other resolutions of the General Assembly, and is further confirmed by the weight of state practice during the period of decolonisation when a billion people were liberated under the banner of self-determination. However, if the status of the right is secure, the same can not be said about its scope. The problem of identification of the legitimate beneficiaries of the right has remained a thorny one for the international community since Woodrow Wilson coined the term in the post-World War I reconstruction of Europe. The UN practice and law resolved the issue to a great extent in the context of decolonisation but there still exists utter confusion and uncertainty about its applicability in non-colonial situations. Denying self-determination to the Biafrans while recognising it for the Palestinians, serves to reveal the ambivalence of the international community on the question of legitimate claimants to the right of self-determination. The most recent exercises of self-determination in the former Soviet Union, Yugoslavia and Eritrea have made the issue more complicated.

Given all this confusion it is fortunate for the Tibetans that the legitimacy of their claim to self-determination is already recognised by the General Assembly. This puts the Tibet's case in the category of Eritrea and distinguishes their self-determination movements from those of Chechenya, Quebec, Kurds, Northern Somalia, and

countless other secessionist self-determination movements. The close similarities between the situation of Tibet and those of Baltic states and Kuwait also place Tibet's case for self-determination in comparatively better legal position than most self-determination movements. Not surprisingly, many studies confirm that the Tibetan people possess a right to self-determination. They possess this right because they satisfy the requirements of 'peoplehood' laid down by international law. They are a separate and distinct people and have been treated so by the Constitution, legislation and practice of the Peoples Republic of China itself. Right to self-determination is a people's right. Therefore, once it is admitted that the Tibetans are a 'people' for international law purposes, there is no basis for any state to deny the entitlement of the Tibetan people to self-determination.

The fact that Tibet was a state independent both in fact and law prior to its occupation by the People's Republic of China further strengthens the legitimacy of the Tibetan claim to self-determination. Tibet's long history of separate and independent existence, its unique historical status, and the peculiar common characteristics of its peoples all go to support the right of self-determination of the Tibetan peoples. Therefore, the repeated assertions of China that Tibet is an integral part of China can not serve as a basis for denying the people of Tibet the exercise of their right to self-determination because the former's claims to the territory are without any justification. Neither the Seventeen point Agreement nor the Chinese invasion and subsequent conquest of the territory can grant to the PRC legal title of Tibet. China knows it well and that is why the Chinese government has never claimed to have acquired sovereignty over Tibet by conquest. It bases its claims to Tibet solely on the alleged subjection of Tibet to a few of China's strongest foreign rulers in the thirteenth centuries. It is indeed sad that China, one of the ardent supporter of the right of self-determination, and strong opponents of imperialism and colonialism is citing Mongol and Manchu imperialism to deny the right to self-determination of Tibetan people. But even Chinese arguments based on the historical claims do not justify the denial of the existence of Tibet's right to self-determination. As pointed out by Wilmer, Cutler and Pickering; neither the formal ties which Tibet developed with other powers, especially the Manchu Court, nor the actual influence they exerted over Tibet led to the extinction of Tibet as an independent state in international land. Tibet throughout this period continued to possess all the attributes of statehood. Its independence was emphasised *inter alia*, by Nepal and Britain's conclusion of bilateral treaties with Tibet, which presupposed Tibet's international personality. Since belligerent occupation does not affect the continuity of the occupied state, even when the government of that state exercises no effective control over its territory or its driven into exile, the occupation of Tibet in 1910 and the flight into exile of the Dalai Lama and his government did not affect the continuity of the Tibetan state.

In view of the irrationality of the Chinese arguments, the principles of international law requiring the maintenance of state's territorial integrity which usually come into

conflict with the principle of self-determination have no application in the case of Tibet.

Now the questions that need to be considered are whether special circumstances of the case, such as the passage of time, can operate as limitations on the exercise of Tibet's right to self-determination and what is the nature of the duty correlative to this right of self-determination? These problems in turn raises a number of other complex questions. Is fifty years of China's military rule in Tibet sufficient in itself to create any title to invaded territory by prescription? Does a right of self-determination, once declared by the United Nations, continue indefinitely?

Whereas in the past conquest was generally considered among the valid forms of acquisition of territory, in modern post-1945 international law, illegal use of force by a State to acquire a part or the whole of the territory of another State is regarded as a supreme violation of international law. In fact, there is a considerable body of state practice in particular cases to say nothing of the state practice represented by the Friendly Relations Declaration and Aggression resolutions to the effect that claims to territory based solely on the effective use or threat of force are devoid of any legal validity.

As regards the effect of time on the validity of title based on conquest it may be argued that nothing has happened in the last fifty years which, according to generally accepted norms of international law, can justify the conclusion that title obtained by illegal force has become legal as a result of the PRC's 50 years' control over Tibet and as a result of which Tibet's right to self-determination has extinguished.

It must be noted that the General Assembly has not withdrawn its resolutions on Tibet. The organisation knows how to 'repeal' decisions when it want to. In 1991, the General Assembly revoked its notorious 'Racism is Zionism' resolution. But the General Assembly has not done so in the instant case. Moreover, there is sufficient evidence to indicate the inability of the Chinese authorities to subjugate Tibet. Further, modern international law forbids the recognition, whether initially or by consolidation, of a title obtained by illegal force. The relevant provision of the Assembly's Definition of Aggression provides: "No territorial acquisition or special advantage resulting from aggression is or shall be recognised as lawful". It is well recognised in practice involving the Baltic states, Kuwait, Israel's annexation of Jerusalem (in 1967) and in the General Assembly resolutions cited above. The world did not recognise the Soviet Union's annexation of the Baltics for fifty years and waited for the exercise of the right of self-determination by the Baltic states. Why not in Tibet?

As noted above, modern international law requires states not to recognise illegal occupation of a territory. Consequently, if a state grants *de facto* or *de jure* recognition to illegal situations brought about by aggression, it commits a breach of its duty by non-recognition. It has been argued in the context of East Timor that if the annexed territory is a non-self-determined territory, such actions amount to a denial of the concerned people's right to self-determination. The same can also be said about

Tibet as well. True, there is no Security Council resolution instructing states not to recognise China's annexation of Tibet, as was done in respect of Southern Rhodesia, Namibia, the Bantustans of South Africa, the Turkish Republic of Cyprus and the Kuwait. But the obligation not to recognise arises from the general law which does not require a statement of the Security Council to make the duty operative. The duty of non-recognition makes incumbent on states to assess the situation in good faith and act accordingly. When we look at the conduct of states in regard to Tibet we find that the members of the community of nations, do assume that Tibet is a part of China, but few have specifically said so. The fact that the annexation of Tibet is not disputed does not signify recognition of a *de facto* situation under international law.

The Tibetan people's right to self-determination is their right and it is a duty of the international community to provide moral and material support to them in their effort for the exercise of the right. The Friendly Relations Declaration 1970 encapsulates the obligation. Thus:

Every state has the duty to promote, through joint and separate action, realisation of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle.

2 SELF-DETERMINATION OF THE TIBETAN PEOPLE: THE DECOLONISATION PERSPECTIVE

The right to self-determination from colonial rule is a norm of *jus cogens*. At first, it means that colonialism as an institution is illegitimate and anachronistic. The second implication is that all former colonies are entitled to self-determination and independence. Just as any violation of a *jus cogens* amounts to an international crime, similarly any breach of the right of self-determination by the metropolis may also amount to an international crime. It logically follows that maintenance of colonial domination by force will put the colonial power in the category of an occupying power.

The evolution and development of a considerable body of decolonisation principle by the United Nations in the last fifty years has made the applicability of the right of self-determination to non-self-governing territories relatively uncontroversial. The relevant principles and norms as set forth in the UN Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Friendly Relations Declaration and numerous other resolutions on self-determination and decolonisation

besides addressing human rights concerns create additional national and international obligations. The United Nations recognises the separate and distinct international character of non-self-governing territories from that of their colonial rulers. As a consequence, if claims of self-determination were to be put forward by N.S.G.T.S. against their colonial ruler, they would not be deemed to fall within the domestic jurisdiction of the colonial regime. It also follows that whatever might be the pattern of relationship between a colony and its administrative authority, it can not affect the international status of the territory in the eyes of the United Nations. Once a territory is declared as a N.S.G.T. by the United Nations, the fact that the territory in question is a constitutionally overseas province of the colonial power, or is a self-governing territory under the constitution of the administering authority, is immaterial and does not exonerate the State concerned from performing international obligations regarding decolonisation of the territory. This obligation does not extinguish by the lapse of time or by the acquiescence of the subjugated people to the colonial rule.

The United Nations forbids any attempt of the colonial regime to divide any non-self-governing territory with a view to defeat the exercise of the right of self-determination by the concerned people. It is contrary to the principle of *uti-posseditis*. Further, any attempt to change the demographic composition of the territory with the aim of frustrating genuine self-determination has been repeatedly condemned by the General Assembly. This is quite understandable because, if a colonial power is allowed to upset the demographic patterns in the colony to favour a loyalist group, any self-determination exercise will always favour the association of the territory with the colonial power. Therefore, if a colonial power encourages settlements of a colonial population on the territory without the free consent of the territory's indigenous people, it is incompatible with its international obligations in regard to that non-self-governing territory.

The United Nations regards colonialism as a threat to world peace and stability and considers the occupation of a territory by a colonial power as an act of aggression. Moreover, while the use of force in non-colonial cases has been controversial the General Assembly has approved it generally in all colonies in which self-determination is being forcibly deprived. An armed struggle against a colonial power is considered an international war to which international rules on the conduct of war apply. Third states may lend moral and material support to the indigenous people in the armed decolonisation struggle. But third-party states may not lend assistance to the colonial power in furtherance of the suppression of an indigenous people's right to self-determination. If they do so it would amount to intervention under the UN Charter and would be contrary to international law.

As noted above, the UN practice in this area has significantly modified the principle of nonintervention. Therefore, if a state recognises the sovereignty of colonial power over its colony or enters into any treaty with the latter over the colony's resources, it breaches its duty to respect the right of self-determination of the colony

in question, because even a minimalist reading of the right demands of third states that they do nothing to infringe or impede the exercise of that right.

The international community is required not to recognise as legally valid the acts of the colonial power. Moreover, as pointed out by some experts, the application of principles of decolonisation law to a particular case also allows for other concrete measures such as the recognition and establishment of diplomatic relations with representatives of a subjugated people and the admission of representatives of an occupied nation to UN membership.

A colonial people have right to exercise the right to self-determination in a variety of ways: independence, free-association, integration or any other political status freely determined by them. The implementation of the right to self-determination can also be achieved through the recognition of a people's right to maintain, assure and perfect their full legal, political, economic, social and cultural autonomy. But ultimate decision regarding the future political status shall be with the people of the individual colony. In the hey days of colonialism the United Nations gave preferences to independence over other options and laid down specific and strict regulations for the exercise of the options of free-association and integration.

When one looks at Tibetan's claim to self-determination from this above stated perspective, it emerges that although the United Nations recognises the right to self-determination of the Tibetan people, it has not classified it as a non-self-governing territory. True, Tibet is not an European overseas colony and therefore does not fall in the category of traditional colonialism to which the principles of the law of decolonisation have been generally applied by the United Nations.

Traditional colonialism refers to a "political, economic relationship between a dominant Western nation subsequent non-western people". But colonialism is a loaded term and moreover the colonial rule of a non-European power may be more oppressive and exploitative than the classic colonialism. Furthermore, the right to self-determination has broader applicability and the United Nations has applied the principles of decolonisation law in such non-colonial situations as Namibia, Palestine, South Africa, East Timor (under Indonesian illegal occupation) and Western Sahara (under Morocco's forcible occupation).

Under the resolutions of the United Nations General Assembly there are certain criteria laid down concerning how a territory can be regarded as non-self-governing. According to General Assembly Resolution 1541(XV) a *prima facie* case for a non-self-governing territory is one which is 'geographically separate and is distinct ethnically and/or culturally from the country administering it'. Once such a *prima facie* case is established, other elements such as administrative, political, jurisdictional, economic, and historical factors can be considered. If the 'relationship between the metropolitan state and the territory concerned is of such a nature that the latter is placed 'in a position of status of subordination', the presumption, that such a territory is non-self-governing under Chapter XI of the Charter, is confirmed.

If these criteria were to be applied to Tibet and violations of human rights on mass scale were to be taken into cognisance, Tibet could be deemed to be a non-self-governing Territory. The preponderance of evidence suggests that Tibet has been under the alien occupation, subjugation and occupation of the People's Republic of China (PRC) and has been administered with the characteristics of an oppressive colonial administration. Since the territory has all the features of traditional colonialism it comes very well within the purview of the 1960 Decolonisation Declaration. The oppressive and exploitative social-oriented colonial rule to which the Tibetans are subjected is not only constitutive of a denial of fundamental human rights but it is also inconsistent with the Charter of the United Nations, the Universal Declaration of Human Rights and the 1960 Decolonisation Declaration.

The fact that the relevant General Assembly resolution on self-determination of Tibet had been adopted at a time when the exclusive focus of the United Nations activities in the field of self-determination was on decolonisation provides a basis to speculate that colonial nature of the Chinese administration must have weighted with the an overwhelming majority of members of the United Nations General Assembly when they voted for the said resolutions. Once the non-self-governing status of the territory is recognised it will no longer be justified for China to evade its international obligations regarding decolonisation of Tibet under the cloak of the territory's constitutional status or by an appeal to its domestic jurisdiction or to its territorial integrity.

Nobody can deny the normative pre-eminence of the right to territorial integrity in international law but in the UN practice the exercise of the right of self-determination by a non-self-governing territory is not considered a violation of the principle of territorial integrity. Thus it is absurd to suggest that Angola had no right to self-determination on the grounds that its exercise would fracture Portugal's territorial sovereignty. Given the illegality of the Chinese control over Tibet the territorial integrity argument has no relevance of all. In fact what is at stake in this case is the territorial integrity of Tibet which was an independent State prior to the Chinese aggression.

Thus Tibet is a fit case for being recognised as a non-self-governing territory by the United Nations. The recognition of the right to self-determination of Tibet by the United Nations gives rise to a duty on the part of the international community to come to its aid and to take all possible steps (including its recognition as a non-self-governing territory) to facilitate the realisation of the right by the Tibetan peoples. If the right does not create such obligations for the UN, one wonders what force the principle has?

The United Nations recognises Tibet as a colonial territory, it will give rise to manifold consequences.

First, the Committee of Twenty-four will be permitted to compile information on the decolonisation movement and to orchestrate international action toward

furtherance of the movement.

Second, member-states will be obliged not to lend support to a regime considered an occupying power in breach of principles of self-determination and aggression.

Third, foreign investment that involves the exploitation of the human and natural resources of the territory, if undertaken without the prior authorisation of the United Nations, will be unlawful.

Fourth, member-states will be obliged not to recognise the illegal occupation of Tibet by China.

Fifth, they will be permitted to assist in the decolonisation struggle of the Tibetan's national liberation movements.

Sixth, the United Nations will be able to extend the official observer status to such movement with the United Nations which in turn would entitle them to most rights of UN membership. Considering that the absence of the observer status of Tibet at the United Nations has made it exceedingly difficult for Tibetan peoples to be heard and has resulted in their frustration and hopelessness, such development will have far-reaching implications for the exercise of the Tibetan people's right to self-determination.

Seven, it will authorise the United Nations to apply meaningful sanctions aimed at the expulsion of the colonial aggressor regime.

Finally, it will make the partition of Tibet into Central and Western Tibet (named as the 'Tibet Autonomous Region) and annexation of the provinces of Amdo and Kham by Chinese provinces unlawful and entitle the indigenous peoples of the entire Tibet to a right of self-determination and provide legal basis for the recognition of the right to return of the Tibetans in exile to their motherland.

It is sometimes suggested that the colonial right to self-determination is qualified by other principles of international law, viz. the principles of *uti posseditis*, historical ties and colonial enclaves in international law. Do these arguments go against the Tibetan peoples' right to self-determination? Regarding historical ties we have argued elsewhere that China's contention on this point is baseless because no legal or political Sino-Tibetan ties was inherited by the Chinese from the Manchus after the 1911 revolution and the Chinese government never succeed in establishing any authority over Tibet between 1911 and 1950. Similarly, to suggest that Tibet represents an enclave in international law is to engage in academic sophistry. Tibet is not so small and insignificant that it can justify its incorporation into a larger contiguous China. Tibet is larger and more economically viable than many existing states, e.g., Nauru, Micronesia and San Marino. Much the same can be said for the relevance of *uti posseditis* in the case of Tibet. As articulated by the I.C.J. in the *Frontier Dispute case*, this principle requires that States should become independent within existing colonial boundaries and seek to preserve the integrity of the newly independent state from further acts of self-determination, e.g., Krajina from Croatia or most notoriously, Biafra from Nigeria. It does not entitle a powerful

neighbour state to absorb a smaller and weak State.

3 SELF-DETERMINATION OF TIBETAN PEOPLE: THE HUMAN RIGHTS PERSPECTIVE

The principle of self-determination has been proclaimed as a principle of universal application under the UN Charter and other related instruments and is increasingly becoming so in practice as well. The unification of Germany, the independence of the Baltic States and other republics of the Soviet Union, the emergence of Croatia, Slovenia, Serbia and Bosnia-Herzegovina as sovereign states, the referendum in the Czech and Slovak Republic in 1992, by which Slovakia and the Czech Republics became two separate countries; the referendum in Eritrea in which the people overwhelmingly voted for independence, and the establishment federal states in Belgium in the same year are all exercises of the right to self-determination in a non-colonial context. Interestingly, most of these exercises took place outside the framework of the United Nations. Tibet's right to self-determination deserves to be governed by the principles of decolonisation but it can also profit from the broader implementation of self-determination outside the strict classical decolonisation context.

In the context of the non-colonial right to self-determination, human right perspective is more relevant than anything else. As is well known, the right to self-determination is a collective human right by virtue of which all peoples are entitled to freely determine their political status and freely pursue their economic, social and cultural development. Right to self-determination is not just a single human right but a bundle of human rights. Accordingly, the realisation of the right to self-determination is an essential condition for the effective guarantee and observance of individual and group human rights and vice versa. If beneath the guise of ostensible natural unity, colonial and alien domination exists in fact, the right of the subject people to self-determination cannot be disregarded without international law being infringed. In such situations the fundamental causes of grave human rights violations will not be removed without creating conditions in which the right to self-determination may be exercised. Since the principle of self-determination in the sense of independence or secession has disastrous consequences for the territorial integrity of the existing states, the international community has been resolute in its rejection of claims to secessionist self-determination, although the Friendly Relations Declaration, 1970 and the Vienna Declaration on Human Rights, 1993 holds out the possibility of a remedial secession in extremely rare cases. Where deprivation of human rights is rampant, secession appears to be the only remedy to save a people from genocide and other grave forms of violations of human rights. Where sovereignty over the territory is in dispute, a claim to external self-determination or secession may be regarded as legitimate. In other situations the right to self-determination should be seen as a means to achieve a broader set of goals such as respect for human right, rule of law, democracy and

autonomy, the denial of which may eventually justify the assertion of self-determination as an end in itself. The availability of the right of self-determination in an expanding variety of circumstances entails a multitude forms of implementing the right of self-determination, with secession of independence being very rare outside the colonial context.

Against this background it is interesting to examine whether human rights situation in Tibet provides any justifications for the demand of the Tibetan people for the exercise of their right to self-determination. Contrary to Chinese claims, Tibetans have been subjected to a consistent pattern of serious violation of universally recognised human rights. Widespread and systematic abuses against individual Tibetans and against the Tibetan people, their culture and religion have been disseminated as reported by various human rights organisations and a number of governmental delegations which visited Tibet. The death of over 1.2 million Tibetans (one-sixth of the population) between 1951 and 1979 and cultural genocide have made the international community seriously concerned about the very survival of the Tibetans people and disappearance of their distinct religious, cultural and national identity. Thus in all the three resolution which the UN General Assembly has passed on Tibet, the Assembly expressed grave concern at the continued violation of the fundamental human rights and freedoms of the people of Tibet and the continued suppression of their distinctive cultural and religious life, and declared its conviction that such violations embitter relations between peoples. These resolutions also called for respect for the fundamental human rights of the Tibetan people and their distinct cultural and religious life and for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination. Moreover, the General Assembly expressed the hope the member-states will make all possible efforts, as appropriate, towards achieving the purpose of these resolutions. But, alas, despite these resolutions the Chinese government continues its policy of racial discrimination, religious intolerance, cultural genocide, oppression, terror and demographic aggression, overlooking the fact that the Tibet people, like all others are entitled to fundamental human right and freedoms recognised in the universal Declaration of Human Rights and other related covenants and declarations. It is contrary to assurances given by the PRC under the Seventeen point Agreement of 1951, viz. autonomy to Tibet and safeguarding of its culture and religious heritage and traditions.

In recent years the human rights situation of the Tibetan people has worsened further. As pointed out by His Holiness the Dalai Lama, despite an official announcement by the Chinese authorities of the lifting of martial law on May 1, 1990, Tibet remains in a state of *de facto* martial law. According to him, the unending cycle of repression, torture, intimidation and summary executions continues. Control on all aspects of Tibetan life has been tightened and several hundred monks and nuns have been taken away from their monasteries and nunneries. The population

transfer of Chinese into Tibet continues with alarming intensity, so that the whole country is being transformed into a Chinese area where Tibetans are becoming a powerless minority.

A number of distinguished human rights organisations and reports and conclusions of various international bodies have confirmed the seriousness of these charges. National parliaments in a number of countries have passed resolutions expressing their concern at the violation of human rights of the Tibetan people. To illustrate, in a resolution on the situation of the Tibetan People the Sami Parliament confirmed the following violations of basic rights of Tibetans :

- the murder of 1.2 million people since the invasion,
- the forcible sterilisation of women,
- the imprisonment and persecution of those critical of the occupying regime,
- the mass Chinese immigration into Tibet, threatening to make Tibetans a minority in their own country,
- the discrimination of Tibetans with regard to employment and housing prospects. Only some children receive basic schooling, and the education system is based on terms laid down by the Chinese,
- the repression and destruction of Tibetan culture and language, with a massive dominance of Chinese language and culture in the education system,
- the exploitation of Tibet's natural resources for the benefit of China. 40 per cent of the forests have been felled; huge mining and hydroelectric projects have been undertaken, and
- the use of mountainous areas of Tibet as dumps for radio active waste.

These human rights violations led the Sami Parliament to assert that the Chinese occupation of Tibet is in the process of becoming genocide.

The plight of the Tibetan people and the denial of basic human rights to them have figured prominently at various human rights fora of the UN including the UNCHR and its sub-commissions. On 23 August 1991, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities passed the 'Situation in Tibet' Resolution (1991/10), expressing concern at 'continuing reports of violations of fundamental rights and freedoms which threatened and distinct cultural, religious and national identity of the Tibetan people'. In 1992 the UN Secretary-General prepared a note for the UN Commission on Human Rights (E/CN 4/1992/37) containing numerous detailed reports of human rights violations in Tibet.

Needless to say these human rights violations are contrary to international law and therefore make China the state responsible for them. Their continued occurrence in contravention of China's international obligation to promote and respect the basic human rights and fundamental freedoms of the Tibetan people suggests the indispensability of the exercise of the right of self-determination by the Tibetan people because only then will the fundamental causes of grave violations of human rights be removed. In view of poor and hopeless performance of the P.R.C. on human rights of their own people to expect that under the pressure of world public opinion the Chinese colonial regime in Tibet could be humanised and reformed is like daydreaming. What is therefore needed is immediate withdrawal of China's occupation from Tibet and the return of a free Tibet to the Tibetan people. But, since the possibility of the realisation of this goal in the near future does not appear to be very bright, the international community must exercise its pressure on the Chinese authorities.

- to stop the violations of human rights of the Tibetan people, its culture, religion and heritage, and pull back their nuclear arms and stop the massive deforestation of Tibet,
- to cease the policy of population transfer which violates the Article 49 of the Fourth Geneva Convention (1949) and which has reduced Tibetans to the status of minority in their own country,
- to release all the persons who are imprisoned due to their religious or political conviction, or for having expressed their opinion, and
- to stop the ill-treatment of nuns and enforced sterilisation of Tibetan people, and the efforts to destroy Tibet's religious and cultural rights.

Arguably, harsh violations of human rights by the Chinese authorities, along with the denial of the exercise of the right to self-determination, constitute a threat to international peace which in turn justifies the UN Security Council's intervention under Chapter VII of the UN Charter. But given the PRC'S permanent membership of the Security Council, such intervention is not likely to be materialised. In the circumstances the General Assembly should be urged immediately to pass a resolution declaring that the situation in Tibet endangers international peace and security and recommending actions for the peaceful adjustment of the situation in Tibet.

The growing militarisation of Tibet and the installation of the Chinese nuclear arms in Tibet demands that the issue of the Tibetans' right to self-determination should be dealt with from the perspective of international peace and security. It must be recognised that militarisation in Tibet not only imposes an oppressive burden on Tibetans, but it is also a source of instability and potential conflict in the region. The exercise of the right to self-determination by the Tibetans will not only enable

them to pursue their political, social and economic development but it will also restore place and security in the region. It will also help prevention of massive deforestation practised by the occupying Chinese which destroys the delicate ecological balance of Tibet.

Meanwhile, the international community should take the following steps for containing further damage to Tibet's environment.

- The International Bank for Reconstruction and Development and other multilateral and bilateral financial institutions should be urged not to fund projects supporting population transfer of peoples.
- It should exercise its pressure on the Chinese authorities to cease nuclear testing and weapons production, uranium mining, and dumping of hazardous waste.
- An international monitoring authority should be set up to determine ways to restore Tibet's ecological balance and to protest its bio-diversity.
- The United Nations Sustainable Development Commission should consider the problem of deforestation having regard to evidence of the special problem of deforestation in Tibet.

4 NEGOTIATIONS : THE BEST SOLUTION

As noted above, China's repeated assertions that Tibet is an integral part of the motherland are baseless and flawed. The Tibetan peoples are entitled to a right of self-determination. But China denies both the entitlement to and claim for self-determination by the people of Tibet by asserting historical claims to the territory which is being vehemently opposed by the Tibetan people and the Tibetan Government (in exile). Thus there is a dispute about the sovereignty of China over Tibet for the settlement of which China should engage in true negotiations with the Tibetan Government in Exile.

As a member of the United Nations China is under a legal obligation to settle a dispute through peaceful means, including negotiations. In 1979, China's supreme leader Deng Xiaoping stated that China was prepared to discuss anything except total independence of Tibet and since then the Dalai Lama and his Government have repeatedly made efforts to find a negotiated solution to the grave situation in Tibet within the overall framework of China's stated policy. Despite that China refused to come to the negotiating table. In his proposals, the Dalai Lama never advocated complete independence from China, but 'mutual benefit and respect'. His Five Point Plan and the Strasbourg Plan contained far-reaching concessions which fully

responded to China's declared interests in Tibet. But Beijing never responded positively and instead of entering into meaningful negotiations to solve the problem of Tibet expressed its desire to discuss only the personal return of the H.H. the Dalai Lama to Tibet.

In view of China's insistence on its stand on Tibet without contemplating any modification and its failure to enter into negotiations in good faith, its sincerity to reach a reasonable settlement is doubtful. It must be noted that negotiations are not merely conversations and, therefore, if a party carries on them with a view to stall any reasonable settlement it can not be said to have acted in good faith. Even if the obligation to negotiate does not mean an obligation to conclude an agreement, the parties are under an obligation which will not be the case when either of them insists upon its position without contemplating any modification of it. (see *North Sea Continental Shelf Cases*, J.C.J. Reports 2, 47; *The Railway Traffic between Lithuania and Poland*. P.C.I.J. Sec A/B No. 42 and 16).

In view of the foregoing the above conducts of China appear to be a violation of the obligation to negotiate a settlement as contained in Article 2(3) and Article 33 of the UN Charter.

Question may be asked whether the Tibetan Government in Exile is the right party for entering into negotiations with China. In this regard it is submitted that the Tibetan Government in Exile, headed by His Holiness the Dalai Lama is regarded as the sole and legitimate representative of the millions of Tibetan people and has been recognised as such by many national Parliaments and the international bodies, and its legal credential to enter into negotiations with the Chinese Government is recognised in diplomatic circles. The statement of Action Conférence of European Parliamentarians (Palace of West Minister, 3-4 May 1993) went a step further by demanding that the Dalai Lama and the democratically elected Tibetan Government in Exile be given the fullest international support and the opportunity to address the UN General assembly, especially in recognition of the nonviolent approach of the Tibetan people in expressing their desire for independence.

According to many legal studies the state of Tibet still exists at this time as an independent legal entity, with a legitimate government, in exile in Dharmasala. They have reached this conclusion on the basis of the continued support for the Dalai Lama among the overwhelming majority of the population and the active resistance to Chinese rule in Tibet, the successful development of the Tibetan polity in exile, the functioning of a government in exile and above all the illegality of the continued Chinese presence in Tibet. If this conclusion is accepted, it will place the Tibetan Government in Exile in the category of those governments whose heads and/or entire cabinets move from the national territory temporarily during moments of crisis. It is significant to note here that during the second world war a large number of governments of states incorporated into the Germany and Italian empires, including these of Netherlands, Norway, Yugoslavia and Greece continued their activities in

London. In such a case no formal act of recognition was called for and none was given because there had been legal continuity. According to legal experts, such governments continue to be state organs, possess capacity to conduct the legislative, administrative, and judicial functions of government. As observed by Sir Arnold McNair.

The mere fact that a foreign government has been deprived of the control of a part or the whole of its territory by an enemy in no way invalidates legislation passed or other acts of sovereignty done by it outside its normal territory. There is no principle of international law which says that a government can not act validly upon foreign territory with the consent of the local sovereign.

As the foregoing analysis shows, by refusing to enter into meaningful negotiations with the Tibetan Government in Exile, the Chinese authorities are committing a breach of its international obligation. Since neither the period of time which has elapsed since the Chinese invasion of Tibet, nor the degree of effective control which China has been able to exercise in Tibet through the maintenance of a military presence there is sufficient to legitimise its illegal acquisition of territory. It is in China's own interest to take necessary steps for the resolution of the issue of Tibet. It should not see the campaign launched by H.H. the Dalai Lama for the realisation of the Tibetan people's right to self-determination as a separatist movement against the territorial integrity and sovereignty of China. Tibetans are only claiming to enjoy those rights to which they are entitled as a distinct people under international law. They do not have any ill will against China and its people. All that they are struggling for is liberation and freedom from the colonial occupation in Tibet.

5. MODES OF IMPLEMENTATION OF THE RIGHT OF SELF-DETERMINATION

As noted earlier, there are various forms of the exercise of the right of self-determination, viz., independence, integration, free-association or any other political status negotiated by the parties. It can also be exercised in the forms of self-government, self-administration, self-management or autonomy. Since His Holiness the Dalai Lama has opted for options other than independence and Chinese on its part promised autonomy to the Tibetan peoples under Seventeen point Agreement of 1951 and also on numerous occasions, a brief discussion of the concept of autonomy as a means of exercise of the right of self-determination will be relevant here.

Although the concept of 'autonomy' is imprecise, it is well rooted in international law. Broadly speaking, there are four kinds of autonomy under international law :

federal states, international territories and territories of particular international consequence, associated states and cultural and religious autonomy. A distinction should, however, be made between autonomy granted to certain entities as a response to their desire for political self-government and autonomy as a means of guaranteeing certain social ethnic group a degree of independence from governmental interference in matters of particular concern to these groups. While territorial autonomy may be an apt solution to the problem of self-determination of non-self-governing territories or other types of international territories, it may not be an apt answer to the problems of ethnic minorities. Autonomy in relation to minorities does not necessarily suggest that a territory inhabited by a particular group must be fully independent and comparable to a sovereign state. It refers to freedom from governmental institution in matters of particular concern to certain social or ethnic group and describe the degree of independence and control over their own affairs. It refers to a practical and flexible set of protections ranging from cultural autonomy and religious freedoms to self-management, self-administration and self-governance in certain specified areas.

Many states have evolved various autonomy models of autonomy in response to the demand of the indigenous people's for self-determination, viz. reservations as in the case of the United States of America and the Philippines, *Comarca* in Panama, Home rule as in the case of Greenland, Brazilian self-governance, *Lappish* (or Sami) Parliament in Finland and Norway, *Samling* of Sweden and autonomous district council as in India we have also the models of compacts of free association for Belau, Marshal Islands and the Federated States of Micronesia and of the commonwealth Covenant in respect of Northern Mariana Islands.

Although it is for the Tibetan people to decide the appropriate model for themselves if and when plebiscite or referendum is conducted, the framework laid down in the Strasbourg proposal may form the basis for evolving suitable model for the exercise of the right to self-determination by the Tibetan peoples. In that proposal it was suggested that China could remain responsible for Tibet's foreign policy and maintain a restricted number of military installations in Tibet for defence until a regional peace conference is convened and Tibet is transformed into a neutral peace sanctuary. That proposal also envisaged Tibet as a self-governing democratic polity having all rights to decide on all affairs relating to Tibet and the Tibetans, in association with the people's Republic of China. Unfortunately, there was no evidence of consideration, or even an acknowledgement of the Proposal from the Chinese Government on 10 March, 1991. Dalai Lama declared that the said proposal was no longer valid.

The distinguished participants may also consider the suitability for Tibet of the model of the Holy See of the Vatican City, which was created under the Lateran treaties of 1929 signed between Italy and Holy See. As a sovereign state the Vatican sends and receives diplomatic envoys and concludes international agreements. It

participates in politically 'disinterested' international activities, has its own political organisation, an autonomous government, and its own legislation. If a political arrangement is evolved in Tibet in which equality, democracy and human rights are secured to the Tibetan people within the bounds of the People's Republic of China and a state on the model of the Vatican city comprising certain area near the Potala Place in Lhasa is created, will it serve the needs and aspirations of the Tibetan peoples who are struggling for the restoration of freedom and independence?

6. THE FUTURE OF TIBET

As the foregoing analysis reveals the Tibetan people have the right of self-determination (internal as well as external). Neither the passage of time since the Chinese invasion and subsequent occupation of Tibet nor the military control exercised by the Chinese authorities in Tibet has in any way affected the legitimacy of the Tibetan's case for self-determination. In general the validity of a claim to self-determination is examined in the light of other countervailing principles of the international law such as the principles of territorial integrity of states, *uti posseditis*, colonial enclave and historical claims, and peace and stability but in the particular case of Tibet these principles have no application. The right to self-determination gives rise to a duty on the part of the international community. The least it demands from third-states is to refrain from doing any thing which impedes the exercise of this right. The duty of non-recognition of territory acquired by force is enshrined in international law in the 1970 Declaration on Friendly Relations and in the 1974 UN General Assembly Resolution on Aggression. Failure on the part of a state to observe this obligation constitutes a breach of the duty to respect the right of self-determination of the concerned people.

Though international law is on the side of the Tibetans due to its inherent weakness it can not provide immediate justice to them. In the absence of central lawmaking and enforcing agencies it is not unusual that violations of its rules sometimes go unabated. The same has taken place in the case of Tibet as well. But it does not mean that they will never attain their right to self-determination. History is replete with instances of 'death' and 'rebirth' of many states. If Baltic states can regain their freedom even after the lapse of nearly fifty years, why can not Tibetans regain their in future. The opposition of the United Nations to the extension of the right of self-determination outside the context of decolonisation for fear of 'Bangladeshization' - the dismemberment of their own member states by minorities could have prevented the United Nations from extending full support to the cause of self-determination of Tibetans. But recent developments with regard to the principle of self-determination in the post decolonisation and the post-cold war era, in which the international

community has adopted relatively more tolerant attitude towards self-determination in a non-colonial context, demand a reasonable and realistic approach and altitude on the part of the United Nations towards the issue of Tibet. If big powers can send multinational force to liberate Kuwait from Iraq's occupation army, there is no justification for not taking similar action to liberate Tibet from 46 years of illegal occupation by China. Tibet does not ask them to fight a war for the liberation of Tibet. All they ask for them is to lend moral and material support in their efforts for self-determination in accordance with their obligations under international law. In his address to Yale University. His Holiness the Dalai Lama asked the international community to apply the same standards to China which it had invoked in response to colonialism and human right abuses in other parts of the world. Is it an unreasonable expectation from the international community as a whole and the Western-European Powers and the United States? The international community does not need to be reminded that the principles of non-use of force, nonaggression, human rights and self-determination are of universal application and legally binding on all member states of the United Nations and human suffering resulting from conquest and human rights violations are the same for all human beings be they in Kuwait, South Africa, Palestine, Namibia, Baltic states or Tibet. Distress over abuses in Tibet is as legitimate as international concern over human rights violations in the Soviet Union and South Africa. These matters are not the internal affairs of any country but fundamental concerns of human beings.

The UN Charter of self-determination has not lapsed nor have the General Assembly resolutions on the right to self-determination of Tibet. For this reason, neither world politics nor the fact that China is a great Asian power and a permanent member of the Security Council, should be allowed to thwart the resolution of the Tibetan issue. The issue should not be seen as a conflict between Chinese peoples and the Tibetans, or between the Peoples Republic of China and the Tibetan Government in Exile. It is conflict between China and the international community. China, a permanent member of the Security Council, has flagrantly violated the UN Charter obligations making the PRC responsible under international law. Needless to say such violations entail a special responsibility for the international community to deal with such violations in accordance with the rules of modern international law.

In the past, regrettably the United Nations has not been supportive of the Tibetan case and, given the present international scenario, the Tibetan People may not get much support from the United Nations in near future too, although they need it very much for the furtherance of their cause. But this should not cause desperation and frustration among the Tibetans because the most recent exercises of the right of self-determination have been accomplished outside the UN frame work. The recent events in the former Soviet Union and the former Yugoslavia have made clear that when the forces of freedom the democracy become powerful they can not be crushed by

any regime howsoever powerful it may be. Neither super power status no permanent membership of the Security Council could prevent the disintegration of the Soviet empire and the extinction of the institutionalised Marxism and Leninism in Soviet Union and Eastern Europe. Similarly, the Chinese people's yearning for democracy and the Tibetan people's struggle for freedom will also eventually cause a change in Beijing's position. However, imperatives of world peace and stability demand that the international community actively encourage China to reconsider, before it is too later, its position as to seek expeditious peaceful and smooth political change in Tibet. The recent events in former Yugoslavia make clear that if timely action is not taken by the United Nations in Tibet when the current crisis, will culminate into an explosion it will sweep the region and cause vast suffering to the people. Will the international community learn lesions from this and other tragic episodes involving the issue of self-determination and not allow the repeat of the same in future?

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3. TIBET'S RIGHT TO SELF-DETERMINATION

L.L. MEHROTRA

The UN Charter

Speaking in the name of the 'Peoples of the United Nations, the charter of that celebrated organisation begins thus:

We the Peoples of the United Nations...

determined to save succeeding generations from the scourge of war,.... and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.... have agreed to the present charter of the United Nations....

Chapter I of the UN Charter dealing with 'Purposes and Principles' defines one of the purposes as follows:

To achieve international cooperation in..... promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (Art. 1.3).

UN Resolution on Self-determination in Tibet

The human rights and fundamental freedoms to which the Charter so repeatedly refers include the right to self-determination. One does not have to go very far to look for that evidence. The UN General Assembly Resolution 1723 (XVI), New York 1961, *inter alia*, states as follows:

The General Assembly

(2) Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination.

The Universal Declaration of Human Rights

As a matter of fact, the Universal Declaration of Human Rights was proclaimed by the General Assembly as a "common standard of achievement for all peoples and all nations." Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights commence with a common article as follows:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

This means that so long as the people inhabiting the geographical region traditionally known as Tibet qualify to be referred to as 'a people', they will have the right to self-determination unquestionably.

Who is "A People"

A description of the criteria to declare a group of individuals as a people for purposes of the UN Charter is contained in the document containing the conclusions of the Unesco meeting of Experts held in Paris in February 1990. It states, *inter alia*:

A people for the rights of peoples in international law, including the right to self-determination, has the following characteristics:

1. A group for the rights of peoples in international law, including the right to self-determination, has the following common features:
 - (a) A common historical tradition;
 - (b) Racial or ethnic identity;
 - (c) Cultural homogeneity;
 - (d) Linguistic unity;
 - (e) Religious or ideological affinity;

- (f) Territorial connection;
 - (g) Common Economic Life.
2. The group must be of a certain number who need not be large (e.g. the people of micro States) but must be more than a mere association of individuals within a state;
 3. The group as a whole must have the will to be identified as a people or the consciousness of being a people.;
 4. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity."

Apart from the conclusions reached by the UNESCO Experts, some other criteria have been suggested from time to time including:

1. economic viability;
2. a measure of international recognition;
3. willingness to submit to a referendum; and
4. willingness to respect fundamental human rights and peoples' rights.

An attempt is made below to apply these criteria one by one in the case of Tibet.

A Common Historical Tradition

Tibetan people have a common historical tradition that goes back to several centuries before the birth of Lord Christ. Apart from the general belief that they are descendants of Avalokitesvara or Chenresi, an incarnation of Buddha represented by His Holiness the Dalai Lama, Tibetan historical works like *Deb-Sngon*, *Dga'-Ston* and *Bu-Ston*, speak of their ancestry going back to the times of the *Mahabharata* war in India. According to this tradition, a king or military commander named Rupati of the Kaurava army fled to Tibet with his followers following defeat in the epic war with the Pandavas. This claim is based on a letter written by an Indian Pandit, Shankara Pati (Dege Dakpo), about 100 years after the death of Buddha, in which the learned Pandit describes the migration of Rupati and his followers into Tibet (Tibet - A Political History by Tsepon W.D. Shakabpa, p. 5).

According to the same Tibetan source, Tibet had an almost unbroken line of kings from Nyatri Tsenpo, the son of a noble family of Magadha in India, called in Tibetan words, as Mak Gyapa, going back to the second century B.C. He is said to have wandered into Tibet and accepted by its people following the Bon religion as their king, in the belief that he had descended from the sky to rule over them. According to this tradition, the arrival of Nyatri Tsenpo also marked the dawn of a new

civilisation when they came out of their cave dwellings and built the first house at Yumbulagang which could still be seen in the Central Tibet until the departure of His Holiness the Dalai Lama in 1959. This dynasty, among others, gave birth to many a great kings, including the most famous of them, Songtsen Gampo, the 32nd in line from the founder king, who not only unified Tibet and gave it 10 moral principles and 16 rules of public conduct, almost like Ashoka, but established matrimonial alliances with China on the one hand and Nepal on the other.

This line of kings kept its constant connections with India from generation to generation seeking religious, spiritual and cultural inspiration from it. For example, Tho-Tho-Ri Nyan Tsen (b. 173 A.D.), is learnt to have received a Buddhist scripture called Nyenpo Sangwa (the *Secret Book*), which Songtsen Gampo got translated into the Tibetan language four generations later from Sanskrit. The scholar, who achieved this feat for the king was Thon-Mi-Sambhota, who was sent to Kashmir in Northwest India, where he studied Sanskrit and evolved a script for the people of Tibet out of the Brahmi script of India as it prevailed under the Gupta empire. The book he translated marked the introduction of Buddhism in Tibet and currency notes printed in Tibet celebrate the arrival of the *Secret Book* (233 A.D.). These events belonging to the common historical tradition of Tibet are engraved in Tibetan consciousness and constitute major landmarks in their evolution as a people with a common heritage.

Racial or Ethnic Identity

Though having constant interaction with two major civilisations, namely, Indian and Chinese, throughout history the people of Tibet have retained their identity in so much as they neither belong to the yellow Chinese race nor to the Indo-Aryan stock, and the form of Buddhism that they practice, known as Lamaism, has a very special flavour of its own. It is based on the theory of incarnate Lamas of whom His Holiness the Dalai Lama is the most important. It is a peculiarly Tibetan form of Buddhism combining many local streams with a multiplicity of Buddhist and Tantric traditions from India. Lamaism included elements from the Bon religion as well, which was in practice in Tibet before the introduction of Buddhism. Tibet has several Tibetan Lamist sects of its own, but principally the following:

1. The Nying Ma-Pa or the Red Hat sect which traces its origin to Guru Padma Sambhava, who came from India during the reign of king Trisong Detsen (755-797).
2. Ka Dampa, a sect which owes its origin to Saint Atisha Dipankara, a Bengali saint, who came to Tibet from the Vikrama-sila monastery in Maghadha (Bihar).

3. Kagyupa sect that follows the tradition of Tilopa, Naropa, Marpa (1012-96) and Milaropa (1041-1123).
4. Sa-Kya-Pa, which derived its name from the Sa-Kya monastery built in 1073.
5. The Ge-lug-Pa, the yellow hat sect, to which the Dalai Lama belongs and which was founded by Tsonkhapa (b. 1357).

All these sects are very special to Tibetan Buddhism. They impart to Tibet a personality of its own which has now lasted more than a thousand years.

Cultural Homogeneity and Religious Affinity

Buddhism permeates every aspect of Tibetan life. Its central doctrine is *Ahimsa* or nonviolence, i.e., not only non-injury to human beings but respect for all forms of life. *Karuna* or compassion is the dominant theme of Tibetan existence. *Karuna* is the highest expression of love. It calls upon a whole people to make sacrifices for the love of others. Under the banner of Buddhism, Tibetans received their lofty idealism from a series of saints who either came from India or were the gift of the religious and philosophical tradition that they had nurtured on their soil into a synthesis of their own. Nature, hardly disturbed by the human touch in Tibet, complemented that tradition by providing for an environment of peace, tranquillity and bliss. Six thousand Tibetan monasteries covered the length and breadth of this strikingly beautiful land, passing the torch of its unique culture and faith from generation to generation. Nearly one-tenth of Tibet's six million population lived in these monasteries and was sustained in its religious and academic pursuits by the rest of the population, imparting to the nation a homogeneity and a tension-free ambiance that did not have its peer anywhere in the world until the Communist Chinese onslaught came with the mission of wiping it all out.

Linguistic Unity: The Literary Heritage

The people of Tibet of all religions speak one language, i.e., Bo-Ke except for intruders from outside. The language has one stock but several dialects differing from region to region. All of Tibet's literature, which is extremely rich and which used to be extremely well preserved in monasteries, derives itself from Buddhist and some secular works in Sanskrit and Pali. Since their script is also derived from India, it is safe to suggest that Tibet's religious, spiritual and literary inspiration is all Indian. Other artifacts of Tibet's culture used in religious ceremonies are also largely of Indian origin.

Territorial Connection

With an area of 2.7 million square kilometres, three-fourth the size of India, Tibet is located on the roof of the world and constitutes the heart of Asia. Its average altitude is 4000 metres. The Himalayan range girds the south of the country like a silver garland. With the highest mountains of the world, the highest plateau, ancient sylvan wealth, deep valleys Tibet is world's most important watershed and father to some of the world's greatest rivers such as Machu (Haungho), Drichu (Yangtse), Tsangpo (Brahmaputra), Senge Kabab (Indus), Phungchu (Arun), Gyalmo Ngulchu (Salween) and the Zachu (Mekong). Some of the world's most spectacular lakes adorn its breast like Mansarovar and lake Kokonor, their total number surpassing 2000. The territorial bounds of its three regions, Amdo, Kham and U-Tsang are traditionally well defined. A part of these regions has been incorporated into Xinchiang, Gansu, Sichuan and Yunnan provinces of China since its military occupation of Tibet.

Common Economic Life: Economic Viability

The people of Tibet share the vast resources of its rich natural mosaic as one people. The country has seven vegetation zones with an average rainfall that varies from 100 mm in the north to 1000 mm in the South east. In 1949, its ancient forests covered 221,800 square kilometers of its territory, i.e., nearly one-tenth of the total, the highest concentration being in the southern part. It is extremely rich in tropical montane and sub-tropical montane coniferous forests. The backbone of the country's animal husbandry-dominated agrarian economy is grassland which is 70% of Tibet. The crop-land is only 2% but extremely productive, the principal crop-lands being arable niches along the river valleys.

Tibet's exploitable hydropower potential has been rated as 250,000 Mw. It also has the world's highest solar energy potential after the Sahara. It has proven mineral deposits of 126 minerals with a significant share of world's deposits of lithium, chromate, copper, borax and iron. It also has rich uranium reserves. Its bio-diversity includes endemic animal species such as antelope, wild yak and argali sheep, giant panda, snow leopard, tiger and black bear. Tibet's huge natural resources have trans-border and trans-national impacts. It enjoys not only proper conditions of a viable economy for itself but its sustainable development is of consequence to all the countries surrounding it. The Chinese nuclear weapon activities in Tibet is not only a threat to Tibet's environment but to all its neighbours.

The people of Tibet are certainly far more than a mere association of individuals within a State if that be a criterion to entitle them to the status of a people. They

used to comprise a cohesive body of people numbering more than six million speaking a single language, following a single faith almost in their entirety, having a common historical tradition and enjoying a viable economic life for centuries together within the bounds of what was traditionally known as Tibet in the heart of Asia. This cohesiveness has now got disturbed by an induction of 7.5 million Chinese, rendering the Tibetans a minority in their own land.

Other Yardsticks for Self-Determination

The Tibetans also meet other yardsticks for self-determination such as 'having consciousness of being a 'people'. Even Tibetans, who have been forced to live out of their motherland for nearly half a century are deeply conscious of the fact that they are part and parcel of the Tibetan race and Tibetan traditions. Moreover, in order to qualify as a people within the definition of the phrase as used in the UN Charter, the Universal Declaration of Human Rights and similar other documents of universal application, if it is necessary to have institutions or other means of expressing common characteristics and an identity of their own, there is no dearth of them in Tibet. Dalai Lama himself is an institution *par excellence* that is unique to Tibet and embodies in itself the identity of the Tibetan people as a whole symbolically. The Tibetans express their common characteristics also through the monastic orders peculiar to them, as detailed above, the language they speak, religious traditions they follow and the costumes they wear throughout the length and breadth of the territory called Bod (Tibet). They are totally dedicated to fundamental human rights and people's rights and have modelled their administration on purely democratic principles, seeking an end to the feudal character of their society. Under the leadership of the Dalai Lama in exile, they have adopted a Constitution under which even His Holiness the Dalai Lama, the sovereign of their hearts and the Head of their State by dint of his being an incarnation of Chenresi (Avalokitsvara) will rule by the will of the people and with their consent through democratic institutions. The Constitution gives them the right to remove the Dalai Lama if they so wish. As a people they are also quite willing to submit themselves to a referendum any time it is permitted. Their keenness to preserve their identity and their culture is more than evident. Eversince they have seen these threatened with the advent of communism in China and the advance of the Chinese military forces into Tibet, they have resisted the process with all their might and have risen in revolt a number of times since 1951. Almost without exception, the Tibetans do not consider themselves as Chinese.

The above analysis should leave no room for doubt that the people inhabiting the land of Tibet on the roof of the world do constitute 'a people' entitled by international law to enjoy the peoples' right to self-determination. It was in recognition of this fact that the United Nations General Assembly adopted three resolutions,

namely, No. 1353 (XIV) of 1960, 1723 (XVI) of 1961 and 2079 (XX) of 1965, all of which recognised the status of Tibetans as 'a people'. UNGA Resolution No. 1723 expressively refers to "their right to self-determination". There can be no denying the fact that the Peoples Republic of China itself, by its very Constitution and practice have treated the Tibetan people as a separate and distinct entity though within the Chinese state. Important Chinese leaders like Mao, Zhou-en Lai and Deng Xiaoping are on record affirming that. The very autonomy of the Tibet Autonomous Region springs from a recognition of the distinct character of the Tibetan nationality under the law of the PRC. Therefore, the fact of Tibetans constituting a people endowed with the right of self-determination cannot be legitimately questioned.

Denial of the Right to Self-Determination to the Tibetan People

The Peoples Republic of China and its organs of state power which exercise *de facto* control over the territory of Tibet deny the people of Tibet the exercise of their right to self-determination. They deny both, the entitlement to and claim for self-determination by the people of Tibet, very emphatically in their publications and statements and in practice. While conceding that the Tibetan people are different from the Chinese, PRC treats Tibet as an integral part of China and therefore not entitled either to self-determination or independence. The Chinese claim to Tibet as an inalienable part of China and equally emphatic Tibetan claim to self-determination and independence, therefore, need to be examined thoroughly in the historical context.

The Treaty of 821/823 A.D.

People's Republic of China claims that it has a right to "ownership" of Tibet not on the basis of its military conquest in 1959 nor on the basis of its effective control over Tibet since 1959 nor even on the basis of the Seventeen point Agreement between China and Tibet. The PRC actually bases its claim of ownership of Tibet on historical relations primarily of Mongol or Manchu rulers with Tibetan Lamas and to a lesser extent between Chinese rulers and Tibetan lamas. They cite in this context the Sino-Tibetan Treaty of 821/823 A.D. which talks of Btsan-Po, the 'great King of Tibet' and Hwang Te, 'the Great King of China', as nephew and uncle. However, that does not make for a dependent relationship. The Treaty of 821 is a treaty "between two countries", which after a period of conflict have come to decide that thenceforth "no smoke or dust" shall appear between them. "Not even a word of

sudden alarm or enmity shall be spoken". China, on the other hand, treats this treaty as evidence of China's sovereignty over Tibet with the Tibetan King placing his land squarely and perpetually under the umbrella of the Chinese empire. The Chinese claim does not stand scrutiny.

The primary purpose of the Treaty of 821 was to stop Tibet's expansion towards China and to contain it within its traditional bounds. It was a sequel to the expansion of the Tibetan empire under the rule of Trisong Detsen (755-797), who invaded parts of China including its capital Changan (mod. Xian) in 763 A.D. and forced China to pay an annual tribute to Tibet. The new ruler, Tsenpo, who succeeded Trisong Detsen had no reason whatsoever in 821 A.D. to accept an inferior status vis-a-vis the Chinese emperor, Tibet actually being in a superior position. The reference to the Chinese emperor as uncle denotes a personal relationship between two equals desiring peace and enjoying sovereignty within their territorial bounds. The text of the peace treaty was inscribed both in Chinese and Tibetan languages on three stone pillars, one in Gungu Meru to demarcate the border between the two countries, second in Lhasa, capital of Tibet and the third in Changma, the Chinese capital. Far from establishing a union between China and Tibet, the Treaty of 821 was a nonaggression pact between two equals. *Inter alia*, the Treaty states:

Both Tibet and China shall keep the country and frontiers of which they are now in possession. The whole region to the east of that being the country of Great China and the whole region to the west being assuredly the country of Great Tibet. From either side of that frontier there shall be no warfare, no hostile invasions and no seizure of territory.

The 821 Treaty is also a solemn commitment on the part of the two nations never to interfere in their affairs and to leave each other alone. The Treaty concludes:

And in order that this agreement establishing a great era when Tibetans shall be happy in Tibet and Chinese shall be happy in China shall never be changed, the three Jewels, the body of saints, the sun and moon, planets and stars have been invoked as witness; its purpose has been expounded in solemn words; the oath has been sworn with the sacrifice of animals; and the agreement has been solemnised.

This was no union. It was a charter of their independence and a solemn vow of good neighbourliness. The two 'great kings' proclaimed:

Having consulted to consolidate still further the measure of neighbourly contentment they have made a great treaty.

The Cho-Yon Relationship

The Cho-Yon relationship between the Dalai Lama and Mongol Emperors (2140-1350) is used as yet another instance from the pages of history to deny the people of Tibet their right of self-determination. Even before one examines the content of that relationship and its very origins, one should state, at the outset, that the Cho-Yon relationship has a bearing on Tibet-Mongol relations as distinct from Sino-Tibetan relations. Therefore, China's use of it in its argument of sovereignty or suzerainty over Tibet should be ruled out of court. Chenghis Khan is the father of the Mongol nation and his successors, who developed the Cho-Yon relationship with the Tibet's leading religious hierarchies, were Mongol rulers whose vast territories included China and not vice versa.

The chronology of events is very important in this respect. The important date is 1240. It was in that year that Prince Godan, the grandson of Chenghis Khan and son of Ogodai Khan sent an expedition to Tibet. At the end of the expedition, he invited one of its leading religious hierarchies, viz, Sakya Pandita Kunga Gyaltsen as follows:

I, the most powerful and prosperous Prince Godan, wish to inform the Sakya Pandita, Kunga Gyaltsen, that we need a Lama to advise my ignorant people on how to conduct themselves morally and spiritually. I need someone to pray for the welfare of my deceased parents, to whom I am deeply grateful.

I have been pondering this problem for sometime, and after much consideration, have decided that you are the only person suitable for the task. As you are the only Lama I have chosen, I will not accept any excuse on account of your age or the rigours of the journey.....

I send you presents of five silver shoes (ingots), a silken gown set with six thousand and two hundred pearls, vestments and shoes of silk, and twenty silken rolls of five different colours. They are brought to you by my messengers, Dho Segon and Un Jho Kharma.

The 30th day of the eight month of the Dragon year (1244).

(From *Gdung-Rabs* as quoted by T.W.D. Shakabpa in *The History of Tibet*, pp. 61-62).

The Sakya Pandita, having no option, left the Sakya monastery the same year, taking with him his ten year old nephew Phakpa Lodro Gyaltsen whom he initiated as a monk in Lhasa en route to Kokonor. Kunga Gyaltsen was invested with temporal

authority over the thirteen myriarchies of Central Tibet in return for his religious services. Tibet thus escaped the future predatory Mongol invasions and instead received their protection. Thus started the Cho-Yon relationship between the Sakya Lama and the Mongol King. But Sakya Pandita was only one of the three most important Lamas of Tibet at that time, the other two being the Lamas of the Drinking monastery and the Taklung monastery respectively. There were many other incarnate Lamas in Tibet who also established a Cho-Yon relationship with several patrons on the Mongol side.

The Cho-Yon relationship thus was intrinsically a religious relationship. The word 'Cho-Ne' signifies a personage worthy of religious adulation while the word 'Yon-Dag' means the dispenser of religious offerings. The patron was thus at the mercy of his spiritual master for his religious instructions and spiritual redemption. In return the latter enjoyed the protection of his patron. That did not imply any inferiority or subordination which is inconceivable in such a relationship. At the most one can say that in the Cho-Yon relationship the spiritual and the temporal elements had joined together for mutual advantages. It was a *sui generis* relationship between the high Tibetan priests and the Mongol patrons, and not in Chinese in origin.

The Cho-Yon relationship crystallized further in the reign of Kublai Khan who succeeded Goden Khan, embraced Tibetan Buddhism, made it the state religion and adopted Phagpa as his spiritual mentor. As a mark of gratitude, the Kublai offered his Tibetan Lama political authority over Tibet in 1254, conferring various titles on him and making him the state's highest spiritual authority.

The event preceded, by full twenty-seven years, the establishment of the Yuan Dynasty by the Mongol Emperor in 1271 to rule the eastern part of the empire and a full thirty-five years before the end of the Chinese Song dynasty in 1279. The Chinese own up the Yuan Dynasty as their own in order to lay claims over the territories of the Mongol Empire but even that would not detract from the Cho-Yon relationships' character as being one of Tibeto-Mongol vintage due to its earlier origin.

In the Cho-Yon relationship, based as it was on mutual respect and on mutual benefit, the Mongol Emperor depended upon his Tibetan spiritual mentor to provide legitimacy to his rule over his subjects and to protect his soul from evil; the latter repaid the debt of gratitude by extending to the former state protection. Mongol rulers made no attempt to rule Tibet directly. That would have been an outrage against the Cho-Yon concept, since the giver of religious offerings could not swallow up the temporal possessions of his spiritual master.

Tibet broke the political connection with the Mongol king in 1350. Jangchub Gyaltsen, who ruled Tibet from 1350 to 1364 replaced the Sakya Lama as the most powerful of Tibet. He eliminated the Mongol influences from the Tibetan administration and introduced a distinctly Tibetan one. He also decreed the Trimyig Shelchey Cho-Ngas, a 15-Article Code for administering justice in the kingdom.

The Chinese also regained their independence of the Yuan Dynasty eighteen years later and replaced it by the Ming Dynasty. The Mings did not inherit any relationship from the Mongols. On the other hand, the Mongol Khans carried on with intensive religious ties with the Tibetans often on the Cho-Yon pattern for centuries afterwards.

It is noteworthy that even after the political link with Mongol Kings was snapped, their Cho-Yon relationship with Tibet lasted. That was because its political content was not integral to that relationship. It was essentially a religious link between the two countries, both of them retaining their identity and neither of them doing violence to the other but reinforcing each other in a very unique way unknown elsewhere. But even if one concedes that this peculiar relationship kept Tibet under the sphere of influence the Mongol emperors, it would be stretching the argument too far to say that by dint of that relationship Tibet became a part of China. It would be more logical for independent Mongolia of today than to claim Tibet as an integral part of their territory on the basis of the Cho-Yon relationship if that line of argument were to be followed.

As a matter of fact, Tibet was ruled from 1350 onwards by its Phagmodru Princes. In 1406, Dakpa Gyaltsen, a descendant of Jangchub Gyaltsen, turned down the invitation of the Ming Emperor of China to visit him. From 1481, Tibet was ruled by the Rinpung dynasty and from 1565 by the Kings of Tsang. In 1642, the temporal authority in Tibet passed into the hands of the fifth Dalai Lama, the spiritual leader of Tibet and the Dalai Lamas ruled over Tibet ever since then in succession, one after the other, as the sovereign head of Tibet until the Chinese invasion in 1949-50.

Thus while the Mings replaced the Yuan dynasty in China and ruled there from 1368 to 1644, it will be wrong to assert that they inherited the right to rule Tibet or ruled over it in actual fact. Contacts between Ming China and Tibet were scarce and of an individual character. Ming rulers showed little interest in Tibet except for the bordering regions.

History is witness to the fact that during the reign of the first four Dalai Lamas, the contact with the Ming Emperor of China was next to nothing. The life and work of the first two Dalai Lamas, namely, Gedun Truppa (1391-1474) and Gedun Gyatso (1475-1542) was confined entirely to Tibet, largely around the Tashi Lhunpo monastery at Shigatse founded by the former, Drepung near Lhasa, where the latter built Ganden Phodrang which was to become the seat of the Tibetan government later and the monastery of Chokhorgyal also built by the latter. Sonam Gyatso, the third in line from Gedun Truppa, visited Mongolia as guest of Emperor Altan Khan, and converted him to Buddhism. The two great personages, one from Tibet and the other from Mongolia, one a spiritual master and the other an imperial authority, also exchanged titles. The Mongolian Emperor designated Sonam Gyatso as Dalai Lama, which means an ocean (of knowledge, wisdom and spirituality) and Dorje Cham (Holder of Thunder Bolt). That is where the title Dalai Lama came into being,

the earlier two Dalai lamas having been posthumously so designated because they were the two previous incarnations of Sonam Gyatso. Sonam Gyatso, on his part, gave Altan Khan the title of "Religious King, Brahma of the Gods."

As the fame of Sonam Gyatso, the Dalai lama, travelled far and wide, he was invited by the Governor of the Chinese province of Ning-Hsia, where he preached to large numbers of people coming from eastern Turkistan, Mongolia and neighbouring areas in China, but he declined an invitation from the Chinese Emperor of the Ming court and instead preferred to visit the region of Kham in eastern Tibet.

Yonten Gyatso, the fourth Dalai Lama (1589-1617) also received an invitation from Emperor Shen Tsung of the Ming dynasty for the purpose of blessing the Buddhist temple in Nanking, but he too declined "because of his responsibility at Drepung and Sera monasteries."

The Ming dynasty came to an end in 1664 with the Manchu conquest. China once again came under foreign rule with the Manchu establishing their dynasty called Qing. By this time, the fifth Dalai lama, Nagwang Gyatso (1617-1682) had also become the supreme political and religious ruler of unified Tibet accepted by Tibetans all over as their "Gongsa Chenpo" (supreme sovereign). The Cho-Yon relationship between the Dalai Lama and the Manchu rulers was soon established on the pattern of the Tibetan-Mongol example, but the link so developed did not involve China. In this context, it may be emphasised that the Qing dynasty was an alien dynasty in the history of China and China was just a part of the large Manchu empire whose frontiers were not co-terminus with those of China. When the fifth Dalai Lama visited Shunzi, the Manchu emperor, at his invitation in 1653, the honours accorded to him were as to an independent sovereign with both sides exchanging complimentary titles as two sovereign leaders and reaffirming the Cho-Yon (priest-disciple) relationship.

During the 18th century, the Manchu forces were invited by Tibet on four occasions—in 1720 to drive out invading Dzungar Mongols and to escort the newly discovered seventh Dalai Lama to the Tibetan capital; in 1728 and 1751 to restore order after civil wars, and in 1792 to meet the Gorkha invasion. Each time this was in response to appeals from Tibet under the Cho-Yon relationship, the initiative resting with the Tibetan. In the 19th century, the Manchu influence in Tibet declined to a point where they were unable to play any role when Tibet fought wars with Jammu (1841-1842), Nepal (1885-1856) and British India (1903-1904). The Ambans appointed by the Manchu emperors were not Viceroys or administrators but ambassadors to look after Manchu interests in the Tibetan capital. After the war with Nepal was over, Emperor Qianlon made certain suggestions (not regulations), which were referred by Gen. Fu K'sanga, Commander of the Manchu Emperor to the 8th Dalai Lama as follows:

There is no doubt that the Dalai Lama acknowledging his gratitude to the Emperor, will accept the suggestions once all the points are discussed and

agreed upon. However, if the Tibetans insist on clinging to their age-old habits, the Emperor will withdraw the Ambans and the garrison after the troops are pulled out. Moreover, if similar instances occur in the future, the Emperor will have nothing to do with them. The Tibetans may, therefore, decide for themselves as to what is in their favour and what is not or what is heavy and what light and make a choice on their own.

(From *Bod-Kyi Lor Gyus Rag Rim G-Yu Preng Ba*, vol.II, page 361- Biography of the Dalai Lamas by Ya Han Chang).

Known for their flair for independence, the Tibetans accepted some of the suggestions that suited them and rejected others.

As for the status of Ambans, it is sufficient to quote what Amban Yu Tai told British Foreign Secretary, Mortimer Durand in 1903 that "he was only a guest in Lhasa-not a master and he could not put aside the real masters, and as such he had no force to speak of." (*Sir Mortimer Durand: A Biography* by Sir Percy Sykes, London, 1926, p. 166). It is quite notable that the Manchu Emperors were careful to appoint Manchu Ambans in Lhasa and not Chinese.

The End of the Cho-Yon Relationship

The special relationship between the Manchu Emperors and the Dalai Lama came to a complete end in the early years of 20th century. In 1908, Manchu troops invaded Tibet. This time there was no appeal or invitation from the Tibetan Government for their entry. The Manchu objective was to remove increasing British influence in Tibet which had been growing consistently in the last few decades and to depose the Dalai Lama. The Dalai Lama responded by terminating the Cho-Yon relationship since the disciple had attacked his spiritual master, violating its very foundations.

The Manchu empire collapsed in 1911 and the Manchu troops surrendered to the Tibetan forces soon thereafter. Under the three-point agreement of 1912 achieved between Tibet and China with Nepal's mediation, all imperial troops were expelled from Tibet. On 14th February 1913, the 13th Dalai Lama issued a proclamation reaffirming the independence of Tibet.

A fully independent status for Tibet was anathema to Britain which was evincing keen interest in trade with Tibet as an imperial power and was afraid of Russian infiltration there. In order to exclude the Russian presence from Tibet, they devised the fiction of China's suzerainty over Tibet. Unable to communicate effectively with Tibet, they approached the Manchu court for assistance in forcing Tibet to cooperate with them. But the Tibetans rejected the treaties of 1890 and 1893 that Britain

had signed with China on the question of trade with Tibet. These treaties were a matter of convenience between Britain and China, but since they did not suit Tibet, the latter felt itself quite free to reject them. In 1903, when the British invaded Tibet, the Manchus did not come to Tibet's rescue and disclaimed any responsibility for the action of Tibetans. What more proof is required of Tibet's independence at the time. The war of 1903 ended in a bilateral treaty between Britain and Tibet with Chinese nowhere in the picture. The Lhasa convention, therefore, presupposed the unrestricted sovereignty of Tibet duly acknowledged by the British imperial power as a state competent to conclude treaties. The 1903 documents in the India office Library contain a very revealing statement of Lord Curzon on this issue as follows:

China's sovereignty over Tibet is a constitutional fiction— a political affectation which has only been maintained because of its convenience to two parties.....as a matter of fact, the two Chinese (i.e., Manchu Ambans) at Lhasa are there not as Viceroys, but as ambassadors."

In 1947, when India became independent, its recognition of Tibet as an independent state was more than evident as the following communication of the Indian government to the Tibetan foreign office would show:

The Government of India would be glad to have an assurance that it is the intention of the Government of Tibet to continue relations on the existing basis until new arrangements are reached on matters that either party may wish to take up. This is the procedure adopted by all other countries with which India has inherited treaty relations from His Majesty's Government." (*Notes, Memoranda and letters exchanged and agreements signed by the Government of India and China*, vol. 12, 1959, p.39).

Thus between the fall of the Manchu empire in 1911 and the complete occupation of Tibet by China in 1951 forcing the Dalai Lama to leave his country in 1959, Tibet functioned as a totally independent international entity. The International Commission of Jurists, which examined this subject through its Legal Enquiry Committee of Tibet summarised its conclusions on the question of Tibet's statehood as follows in their report:

Tibet demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In 1950, there was a people and a territory and a government which functioned in that territory conducting its own domestic affairs free from any outside authority. From 1913 to 1950 foreign relations of Tibet were conducted exclusively by the Government of Tibet and countries with whom Tibet had foreign relations

are shown by official documents to have treated Tibet as in practice as an independent state." (Tibet and China's Peoples Republic, Geneva, 1960, pp. 5-6).

The entry of China's forces into Tibet in 1949 was an act of invasion on a foreign territory. The Seventeen point agreement of 1951 was signed in Peking by the Tibetan delegates under duress. They did not have the plenipotentiary powers to do so nor the seal of the Dalai Lama to be affixed on the documents and the Government of Tibet was not informed in advance of the contents of the documents signed. The Dalai Lama repudiated the agreement at the first opportunity, i.e., after he walked into freedom in 1959, after his flight from Tibet. But even if the Tibetan objections to the validity of the 1951 agreement are set aside, the fact that upon the establishment of the Peoples Republic of China, Tibet was invited to join the new Republic goes amply to prove that Tibet was not a part of that Republic and would need an act of self-determination to join it. That act has not yet taken place.

4. THE RIGHT OF SELF-DETERMINATION AND THE DE-COLONISATION PROCESS

MICHAEL C. VAN WALT VAN PRAAG*

The de-colonisation process has been a long and, in many cases, a painful one. It represents one of the most important implementations of the right to self-determination, which the international community, and the UN in particular, have endorsed and supported. But de-colonisation has not been completed. Today, numerous peoples still live under various forms of colonialism. Some, like Tibet, East Timor and the Western Sahara, constitute occupied states or territories. The non-self-governing territories included on the list of the UN Special Committee on Decolonisation are far from complete. One of the important tasks of the Unrepresented Nations and Peoples Organisation (UNPO) is to promote a principled approach to the issue of self-determination: one that recognises the equal rights of all peoples and that helps prevent bloody conflicts between peoples and the states they are ruled by.

In this spirit, we believe it is important at this juncture in history to, once again, examine and evaluate the right to self-determination, both in terms of its meaning, and in terms of its various possible expressions.

THE RIGHT OF SELF-DETERMINATION

Articles I of both International Human Rights Covenants (the ICCPR and the ICESCR) provide that "all peoples have the right to self-determination," which is defined as the right to freely determine their political status and freely pursue their economic, social and cultural development.¹ This principle, also contained in the first article of the Charter of the United Nations, is the basis upon which the United Nations' mandate to develop and maintain "friendly relations among states" is to be achieved. Other UN instruments hold that the right of self-determination is a prerequisite to the enjoyment of all other fundamental human rights. Most recently, the United Nations World Conference on Human Rights, which took place in Vienna in June 1993, affirmed, in the Final Declaration adopted unanimously by all states, that the right to self-determination is part of the international law of human rights.

* Prepared with Susanne LaPierre, to whom the author is much indebted.

Notwithstanding the theoretical importance of the right of self-determination within the substantive body of international law, consideration and enforcement of this right by individual states and the international community are extremely rare. The reticence of individual states to vindicate the right within their respective borders is not surprising. Few if any state governments will voluntarily relinquish authority to a competing political entity.

Many governments are further concerned that flexibility with respect to the needs of one group within their borders will encourage demands for special treatment by others and even separatist movements, threatening the longevity of their rule. Russia, China, India, Georgia, Indonesia, Burma, Iraq, Nigeria, the Sudan, Romania, Canada and Turkey are particularly concerned by the renewed demands for self-determination of peoples now under their governance.

If global peace and stability are the true goals of the international community, its approach to the tensions between existing states and their constituent peoples is ill-conceived. Ignoring or suppressing movements for self-determination will not occasion their disappearance. As recent events in the Caucasus have shown, centuries of intermittent occupation, efforts at assimilation, and even deportation of disfavoured ethnic groups, as in the case of the Tatars, or the Chechens and Ingush, did not extinguish a people's desire to preserve their national and cultural identity. The lesson the international community should learn from these events, as noted by US Secretary of State Christopher, is that these tensions must be addressed before they escalate to the level of armed conflict now devastating regions such as the former Yugoslavia.

The only long-term solution to conflicts between States and the peoples and nations they rule — legitimately or illegitimately — is one premised on the free expression of the particular group's need to determine its own destiny.² This is not easy, and does not necessarily require a full vindication of the claims of any one people or nation. But any "solution" which does not attempt to respond to the expressed desires of peoples for self-determination, can only be cosmetic in nature. Unless the nature of relations between the aggrieved peoples and nations and the states or governments that rule them are comprehensively reassessed and revised, the underlying problem will only resurface to cause further instability, hardship, and death, at the first opportune moment.

ORIGINS OF THE RIGHT OF SELF-DETERMINATION

The principle of self-determination is not a twentieth century concept. Its historical roots stretch back to the first stirrings of democracy in classical Greece. In fact, the right of self-determination is inseparable from democracy. For if democracy includes the right of the people to choose by whom they are to be governed and under what political system or ideology, then surely it must of necessity include the right to

choose: whether to be ruled by one's own leaders, belonging to the same people or territory, or by external leaders, belonging to an other people or territory, often with traditions, cultures and values that are different. A people should, have the opportunity to elect its own leaders, those it trusts, rather than being compelled to accept leaders and systems chosen by a different, dominant and often more numerous people to suit their interest.

The principles underlying self-determination were embraced by the foremost legal and political theorists of Europe's Enlightenment era. In 1690, John Locke, for example, noted that people have the right "to have such a legislature over them as the majority should approve and flatly acquiesce in."³ Echoing Locke, Jean Jacques Rousseau admonished government officials against wanton sovereignty manipulations stating that it "is making fools of peoples to tell them seriously that one can at one's pleasure transfer peoples from master to master, like herds of cattle, without consulting their wishes."⁴ Similarly, in his seminal treatise on *Representative Government* (1873), John Stuart Mill emphasised the fundamental nature of any system of government, writing: "One hardly knows what any division of the human race should be free to do, if not to determine, within which of the various collective bodies of human beings they choose to associate themselves."

In the twentieth century, US President Woodrow Wilson and a number of his contemporaries explicitly embraced "self-determination," establishing it as the guiding principle for reconstructing Europe in the aftermath of World War I. Wilson confirmed that: "Every people has a right to choose the sovereignty under which they shall live." US President Franklin Roosevelt and British Prime Minister Winston Churchill further affirmed the primacy of this principle when they incorporated it into the 1941 Atlantic Charter. The Charter declared the desire of the signatories "to see no territorial changes that do not accord with the freely expressed wishes of all people to choose the form of government under which they will live."⁵

The principle of self-determination makes its next appearance in the 1944 Dumbarton Oaks proposals, which evolved into the current United Nations Charter. It is prominently included in Article I of the UN Charter in the section articulating the purpose of the institution as the development of friendly relations among nations "based on respect for the principle of equal rights and self-determination of peoples." Since elevated to status as a legal "right," it now prominently figures in a number of other UN instruments.⁶

PEOPLES, AS OPPOSED TO STATES, POSSESS THE RIGHT OF SELF-DETERMINATION

Relevant provisions of international legal instruments provide that the right of self-determination belongs to "peoples." These same instruments, however, fail to define the term. In the wake of this definitional void, alternative theories have been advanced concerning the intended beneficiary.

Some analysts contend that the right of self-determination belongs to states or populations of states, rather than to any distinct legal entity known as a "people." This interpretation would render the subject provisions superfluous, however, as there are other sections within the same legal instruments that specifically protect the sovereignty and territorial integrity of "states."

Other commentators argue that the term is not susceptible to a sufficiently precise definition to implement the right for any group under any circumstances. As the Unesco Experts Committee on Peoples Rights found, however, there are a number of characteristics by which the existence of a distinct "people" can easily be determined.⁷ The most important criterion is subjective: it is a shared perception of peoplehood by the constituent group itself. But this feeling of distinct cultural or national identity must be supported by several objective indicia, such as common characteristics, shared preferences and values, a common history, or common destiny.⁸ The Unesco Committee also considers the existence of representative institutions a necessary criterion for the exercise of self-determination.

In practice, in the vast majority of cases, there is no difficulty identifying a distinct "people." Distinctions among peoples based on the defining attributes of culture, language, religion, common history or traditions are readily apparent. Moreover, group leaders and the people themselves generally refer to themselves as a "people" (The distinction between 'a people' and the term "people" in the sense of a number of individual persons, is often confusing. It is clearer in the languages. For example the German distinction between *das volk* as opposed to *menschen* on the difference in French between *un peuple* and *les gens*). There can be no doubt in anyone's mind, for example, that the Fills, the Saami, the Mongols, the Abkhaz, the Twa, the Scots, the Estonians, the Kurds, the Maori, the Mapuche, the Tibetans, the Tongans constitute distinct "peoples".

Identification can become more complex when a number of closely related groups could either be regarded as distinct peoples or as one people composed of various subgroups. The Aboriginal Australians, for example are made up of numerous peoples each with their own ancestral territory and distinct language, but with many common or similar traditions and at least with a recent common history of oppression. One could also argue that the Chechen and the Ingush are one, as opposed to two peoples, because of their close ethnic, linguistic and historic ties. Difficulty can also arise when a people is separated by artificial boundaries: the Bougainvillians are separated from their Solomon Island brothers by neo-colonial boundaries. Their struggle for self-determination stems from a strong feeling of disidentification with and mistreatment by the Papua New Guinea authorities.

The existence of cases where the identification of distinct peoples on the basis solely of objectively identifiable criteria gives rise to problems, should not be cause for an ideological refusal to implement the right of self-determination based on an alleged inability to define the term "people." In fact, the determination of

peoplehood is, as stated above, largely a *subjective* exercise. Thus, in difficult cases such as those described in the previous paragraphs, the perception of the population itself should be the determining factor when it comes to defining a people for purposes of self-determination.

DE-COLONISATION IS A SPECIAL EXPRESSION OF THE RIGHT TO SELF-DETERMINATION

Since World War II, the international community's action in the self-determination arena has focused on the claims of peoples, or more accurately territories that were subjected to colonisation by European powers. The de-colonisation of African, Pacific and Asian colonies are good examples.

There is no question that colonised peoples and nations are beneficiaries of the right of self-determination. In most cases, the colonised peoples or territories have been expressly recognised by the United Nations as having the right to self-determination. There is no moral, legal or logical reason to set peoples who have been colonised by European powers apart from those who have or continue to be colonised or otherwise subjected to alien domination against their wishes by other powers. In many cases, peoples are being colonised and oppressed by states which, in an earlier period, were colonised by Western powers. Indonesia, for example, is today illegally occupying and colonising East Timor, in contravention of the right to self-determination, a right which Indonesian independence leaders claimed for themselves. In this particular case, East Timor's decolonisation from Portugal has not been fully achieved yet, leaving Portugal as the administrative power, responsible for insuring the free exercise of the right to self-determination of the East Timorese people.

East Timor is a Member of the Unrepresented Nations and Peoples Organisation (UNPO). The Member nations and peoples of UNPO, now numbering over 45, work together to realise their legitimate aspirations through nonviolent means. For some UNPO Members, such as East Timor, those aspirations include decolonisation of their nation and the full exercise of their right to self-determination.

The right to self-determination of the people of East Timor is recognised by the United Nations and is legally beyond question. The invasion of East Timor by Indonesia in 1975 was condemned several times by the UN Security Council Res 384 (22 December 1975), for example, not only condemned the invasion but also called on Indonesia to withdraw its armed forces without delay and reaffirmed East Timor's right to self-determination. Yet, for 19 years the government of Indonesia has persisted in violating its international obligations, but that in no way diminishes the people's right to the full realisation of their inalienable right to self-determination.

If anything, the brutal treatment of the people, which resulted in the death of one-third of the entire population of that nation, strengthens not only the claim to self-determination, but also the international community, and in particular of the United Nations, to take measures to ensure its full and free realisation.

The "universality" of self-determination is a principle frequently evoked: during the 1950's and early 1960's United Nations' debates on China's invasion of Tibet, a number of states, including Ireland, New Zealand, Malaysia, Brazil, and France reaffirmed the universality of the principle of self-determination, implicitly rejecting any limitation based on a former or current condition of colonisation.⁹ The right was also included in the Constitution of the Soviet Union, and in the first Communist manifesto of China, in 1931 as attaching to the peoples of these states, thus clearly evincing no pre-qualification as a former colony of a Western Power. The declarations of sovereignty of the constituent republics of the Soviet Union made in 1989, '90 and '91, were made on the basis and in the name of this right of self-determination. Even the Baltic states, which were never legally annexed by the Soviet Union and therefore continued to exist as states in law, were recognised by many countries including the US and the UK as exercising their right to self-determination. Germany and other countries recognised the same with respect to constituent republics of former Yugoslavia in 1991.

Even more recently, Eritrea's right to self-determination, already recognised by the UN General Assembly in 1950¹⁰, was reaffirmed and exercised; Slovakia exercised its right to self-determination when it separated from the Czech and Slovak Republic. The extensive decentralisation of Belgium into three component parts of a new federation can also be described as a peaceful implementation of self-determination of Belgium's foremost peoples, the Vlamingen and the Wallons.

The Palestinian people's right of self-determination is, of course, a very prominent example of a widely recognised case that does not result from "salt water colonialism".¹¹ Bangladesh was recognised as having the right to self-determination by India and some other countries even before it successfully seceded. It should also be recalled that the UN General Assembly has explicitly recognised the Tibetan people's right of self-determination although it has taken no effective steps to implement the relevant resolutions.¹²

When governments recognise and respect the rights of their constituent peoples, inevitable power transitions can be peacefully effected. Singapore's independence from Malaysia, the independence of Slovakia and Slovenia, the autonomy granted to Greenland, to Catalonia, to Tatarstan, and to Gagauzia, by their respective State governments all represent forms of peaceful realisation of peoples' right to self-determination. This was possible only because the dominant State government did not *a priori* oppose the desire for self-determination of constituent people.

Today, attempts to limit the right of self-determination take the form of Eurocentrism. Arguments are put forward that the right of self-determination may be exercised by some peoples, e.g., those residing in Eastern Europe or the Baltic States, but the peoples of Bougainvillea, the Caucasus, the Maori people and other indigenous peoples are not similarly empowered. No such eligibility distinction can be drawn on principle between these different groups. As Mr. Aiken, the Irish representative to the United Nations and his country's Foreign Minister stated during the UN debates on self-determination of Tibet (in 1959, '60, '61, and '65) :

My delegation is not concerned with the rights of white men or brown men: we are concerned with the rights of men. These rights are universal and immutable. They do not change with the colour, the class or the political ideas of the victim of oppression or the oppressor.

Indeed , the right of self-determination belongs to all peoples. But it is most often claimed by those who are oppressed.

SCOPE OF THE RIGHT OF SELF-DETERMINATION

Assuming that the right of self-determination applies to all "peoples", what are the parameters of that right? Does theoretical acceptance of the right guarantee a particular political outcome for an aggrieved people?

As previously noted, the right of self-determination means the right of a people "to freely determine their political status and freely pursue their economic, social and cultural development."¹³ In this age of escalating environmental degradation, the right should be construed to include participation in decision-making over environmental matters. But what precisely does this language guarantee?

Some commentators and leaders of self-determination movements contend that the right is synonymous with "independence." They argue that a successful exercise of the right must necessarily result in the group's secession from the existing state and creation of a new and totally independent political entity.

According to the UN GA Resolution 1541, however, the right of self-determination can be realised through the establishment of a variety of political entities or relationships:

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by people constitutes modes of implementing the right of self-determination by that people.¹⁴

Full independence is thus only one of a number of possible outcomes.

In today's world there are a number of political arrangements falling short of full independence that reflect the affected people's exercise of the right of self-determination. The "associated state" status of New Zealand and the Cook Islands, the "regional autonomy" of the Tyrolians in Italy's northern region, Greenland's relationship with Denmark, Gagauzia's autonomy within Moldova, Tatarstan's unique status within the Russian Federation, the status of the Aland Islands, and the various arrangements within the Swiss and other federal constitutions, are but a few examples.¹⁵ Indeed, integration into a single state may also be an outcome of an act of self-determination.

Under international law, then, there is a continuum of possible relationships, any one of which can represent a successful exercise of a particular people's inherent right. The degree to which the group seeking to exercise the right becomes self-governing and the amount of control it retains over its external affairs determines where on the sovereignty continuum its political status is placed.¹⁶ Relationships which contemplate less control include complete incorporation into a unitary state, autonomous status or statehood within a federation. Territorial status, commonwealth designation, free association (with or without citizenship), confederation and protectorate status, each with lesser or greater degrees of actual autonomy, as well as independence, represent the far end of the spectrum.¹⁷

The right of self-determination is, in fact, more of a procedural than a substantive right. The focus is on the voluntary nature of the decision-making process, rather than on the substantive result. It only guarantees a people the right to make a choice about the type of political system that they want. It does not determine what that choice will be. "The fundamental requirement inherent in self-determination is a procedure not a preset outcome. . . ." ¹⁸

Political theorists are increasingly interpreting the right of self-determination as one based on human rights concerns rather than "historical sovereignty" considerations.¹⁹ The historical approach attempts to recreate states that existed in the past by restricting claims of self-determination to those premised on the restoration of sovereignty of an historical community that roughly corresponds to the contemporary group of claimants.²⁰ It is the approach favoured by many existing states as it necessarily limits the number of groups entitled to raise a claim for self-determination. The human rights approach is, however supported by the Final Declaration of the UN World Conference on Human Rights, Vienna, June 1993.

The more contemporary "human rights" approach is forward-looking. Rather than seeking to resurrect the past, it views the right of self-determination as belonging to living groups and identifies preservation of cultural integrity and human rights as one of the most important objectives. It proceeds from the understanding that the right of self-determination is a fundamental human right that must be given equal consideration along with the rights of states in evaluating competing claims.

Despite the uncompromising language used to delineate legal rights, these protections are neither absolute nor self-executing. There are few, if any, rights that are not subject to limitations or compromise under some set of circumstances. The individual right to be free from torture is perhaps one of the rare legal rights that may never be abridged. The overwhelming majority of rights are fully indicated only when they do not conflict with any other right or principle; in practice, a rare event. Indeed, the conflict of rights and principles is such a routine occurrence that virtually all democratic states have developed comprehensive legal codes and judicial proceedings to resolve the omnipresent disputes.

When expression of one established right runs afoul of another, a balancing process must be undertaken. In democracies, this process is overseen by an objective arbiter who applies the relevant legal principles to all the facts in an impartial and equitable manner. A decision is then reached that accommodates the most compelling interests raised by the conflict.

Accordingly, neither a state's right of maintenance of *status quo*, territorial integrity or even of continued existence, on the one hand, nor a people's right of self-determination, on the other, is absolute. In a conflict between these two interests, an analysis of all the relevant factors must be undertaken. This includes balancing the needs of the entire population of the existing state against those of the aggrieved people and analysing the impact of a successful exercise of the people's bid for self-determination on intrastate, regional and international affairs. The result of this analysis may call for a readjustment of the existing political relationship between the parties.

In undertaking this difficult balancing task, the UN General Assembly Resolution 2625 (XXV) (referred to as the "Declaration on Friendly Relations and Co-operation among States") can be used as guidance. It states that the right to self-determination should not be construed as

authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states *conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour* (Emphasis added).

States whose governments do not, therefore, represent the interests of a people within the state but, instead, oppress, destroy or exploit that people, have no legitimate right to invoke the principle of territorial integrity with regard to the disenfranchised section of the population. The conduct of the government in question, especially viewed over an extended period of time, therefore is a critical factor in

evaluating a claim for self-determination and an invocation of the principle of territorial integrity.

In applying the above thinking to the situation in Tibet, one cannot escape the conclusion that Tibet forms the perfect example of a nation and people with the right to self-determination, including the right to independence. The Tibetan people's right to self-determination is hard to dispute, as was demonstrated at the London Conference on the Position of Tibet in International Law (1994), and argued in my own book, *The Status of Tibet* (1987).²¹ What the outcome of a free exercise of that right would lead to, that is, if Tibetans were to be asked, by referendum, for example, what status they wish for Tibet, is not hard to imagine. Tibetans want independence. Not least because the forced incorporation of Tibet by China has brought indescribable suffering for the people.

Peace and stability can not be imposed. It can only arise out of a degree of satisfaction of peoples with their situation. Associations of peoples within state structures or between state structures can only lead to peace and stability if those associations, are voluntary and based on mutual respect, equality and mutual benefit.

Today, none of these prerequisites are satisfied in the forced association of Tibet with China. Only a relationship which truly results from an implementation of the right of Tibetans to self-determination, can lead to lasting peace in the region.

NOTES

- ¹ International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, 999 UNTS. 171, 173, entered into force Mar. 23, 1976; International Covenant on Economic, Social and Cultural Rights, opened for signature on Dec. 19, 1966, 999 UNTS. 3, 5 entered into force Jan. 3, 1976. Numerous United Nations resolutions have reaffirmed this principle. See, e.g., Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, UN Doc. A/4684 (1961); Declaration on Principles of Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations of 1970, G.A. Res. 2625 and its Annex, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).
- ² There is a consensus among international legal scholars that the right of self-determination of peoples and nations is recognised by international law. E. Laing, "The Norm of Self-Determination, 1941- 1991," 22 Cal. W. Int'l LJ. 209 (1992). See Hannum, *Autonomy, Sovereignty and Self-Determination - The Accommodation of Conflicting Rights* at 45 (1990); I. Brownlie, *Principles of Public International Law* at 595-98 (4th ed. 1990); Hinck, "The Republic of Palau and the United States: Self-Determination Becomes the Price of Free Association," 78 Cal. L. Rev. 915, 953 (1990) hereinafter cited as "Palau Self-determination". Questions remain, however, over the scope of that right, including to whom the right belongs and whether it includes the right of secession. 22 Cal. W. Int'l LJ. at 210.
- ³ John Locke, *The Second Treatise on Civil Government* at 88, n.9 (J.W. Gough ed. 1947).
- ⁴ Jean Jacques Rousseau, *Political Writings* at 340-41 (COMMUNITY. Vaughn ed. 1915).
- ⁵ Quoted in C. Fenwick, *International Law* at 164 (1965).
- ⁶ See the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) UNGA Res. 1514 (XV), both International Covenants on Human Rights (1967), and the Declaration of Principles of International Law Concerning Friendly Relations Among States in accordance with the Charter of the United Nations (1970) UNGA Res. 2625 (XXV).
- ⁷ While the question of what constitutes a "people" entitled to self-determination does not lend itself to an easy answer, the key factors for consideration include common race, ethnicity, language, religion, and cultural heritage, as well as the existence of an identifiable territory. See Chen, "Self-Determination and World Public Order," 66 Notre Dame L. Rev. at 1290. As a practical matter, the determination of whether the right attaches to a particular group involves consideration of three factors: (1) the degree to which the aspiring group can form a viable entity, both in terms of its internal processes and its ability to function in relations with other entities; (2) the probable consequences of separation for the remaining people of the entity of which the group has been a part; and (3) the consequences of the requested status on the pattern of value formation for the peoples of surrounding regions and the world at large. *Id.* At 1294.
- ⁸ Nanda, *Self-Determination under International Law: Validity of Claims to Secede*, 13 Case W. Res. J Int'l L. 257, 276 (1981).
- ⁹ See UNGA Dec. 11, 1950, remarks of the French representative Mr. Berard at 54; remarks of the Irish representative Mr. Aiken at 54-56; UNGA Oct. 13, 1959, remarks of the New Zealand representative Mr. Shanahan at 120-22.

- ¹⁰ G.A. Res. 390, 5 U.N. GAOR Supp. (No. 20) at 20 (1950)
- ¹¹ G.A. Res. 3236, 29 U.N. GAOR Supp. (No. 31) (1974). See Committee on the Exercise of the Inalienable Rights of the Palestinian People, *Resolutions and Decisions of the General Assembly and the Security Council Relating to the Question of Palestine*, G.A. Doc. A/AC.183/L.2 (1947-1975); G.A. Doc. A/AC.83/L.2/Add.1 (1976-1979).
- ¹² See G.A. 1353 (XIV) (1959); G.A. Res. 1723 (XVI) (1961); G.A. Res. 2079 (XX) (1965).
- ¹³ International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, 999 U.N.T.S. 171, 173, entered into force Mar. 23, 1976; International Covenant on Economic, Social and Cultural Rights, opened for signature on Dec. 19, 1966, 993 U.N.T.S. 3, 5, entered into force Jan. 3, 1976. Numerous United Nations resolutions have reaffirmed this principle. See, e.g., Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1961); Declaration on Principles of Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations of 1970, G.A. Res. 2625 and its Annex, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).
- ¹⁴ See also Mushkat, "The International Legal Status of Hong Kong Under Post-Transitional Rule," 10 *Hous. J. Int'l L.* 1, 4-8 (1987)
- ¹⁵ See Ian Brownlie, "The Rights of Peoples in Modern International Law," at 6 in *The Rights of Peoples* (ed. By James Crawford 1988)
- ¹⁶ Tamanaha, "Post - 1997 Hong Kong : A Comparative Study of the Meaning of 'High Degree of Autonomy,'" 20 *Cal. Wes. Int'l J. Of L.* 41, 43-44 & nn. 11-16 (1989) (hereinafter cited as "Study of High Degree of Autonomy"). See Pomerance, *Self-Determination in Law and Practice* at 74 (1982).
- ¹⁷ See the Compact of Free Association between the Federated States of Micronesia, the Marshall Islands and the United States concluded June 25, 1983, and approved November 14, 1986; the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, concluded Feb. 15, 1975, approved Mar. 24, 1976; the establishment of home rule for Greenland within the Danish state, effective May 1, 1979; the Compact of Association between the Cook Islands and New Zealand, see, Clark, "self-determination and Free Association - should the United Nations Terminate the Pacific Islands Trust?", 21 *Harv. Int'l L.J.* 1, 54-60 (1986); the protectorate relationship between Morocco and France, see Gilson, *Sovereign Bhutan and India, Treaty of Perpetual Friendship and Peace Between the Government of India and the Government of Bhutan* Aug. 8, 1949.
- ¹⁸ Chen, *Self-Determination and World Public Order*, 66 *Notre Dame L. Rev.* At 1291.
- ¹⁹ See Western Sahara Case, 1975 I.C.J. 12 (1975); Anaya, "The Capacity of International Law to Advance Ethnic or Nationality Rights Claims," 75 *Iowa L. Rev.* 837, 841 (1990).
- ²⁰ See Anaya, "The Capacity of the Law to Advance Ethnic or Nationality Rights Claims," supra note 85, 75 *Iowa L. Rev.* At 838.
- ²¹ M.C. van Walt van Praag, *THE STATUS OF TIBET: History Rights and Prospects in International Law*, Westview Press, Boulder 1987 / Wisdom Press, London 1987.

5. RELIGIOUS LIBERTY IN TIBET: A HISTORICAL AND LEGAL APPROACH

PEDRO C. MORENO
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TIBET (CHINA): A BRIEF HISTORICAL AND LEGAL DESCRIPTION

Conflicting views exist regarding the political status of Tibet. There are primarily three competing claims. China believes "that Tibet has been an inalienable part of China's sacred territory since the 13th century."¹ China also argues that "a small number of separatists" have "fabricated" the "so called Tibetan question" and that the "issue" of self-determination serves as an "ulterior motive of interfering in China's internal affairs."² Supporters of Tibetan independence, on the other hand, see Tibet as an independent nation, illegally occupied by China.³ Internationally, countries have differing opinions regarding the status of Tibet. For instance, the United Kingdom views Tibet as "autonomous" and recognises China's "special position" there.⁴ On the other hand, the United States regards the Tibet Autonomous Region as part of the People's Republic of China.⁵

Historically, interaction between Tibet and China dates back as early as 763 A.D. when the Tibetan ruler, Trisong Detsen (reign 755-797) invaded China for expansion purposes.⁶ Twenty years later, the two powers signed a peace treaty which supposedly established borders between the two.⁷ Less than one hundred years later, in the early ninth century, Tibet and China concluded what is perhaps their most historically significant treaty. It stated that "the two sovereigns, uncle and nephew, have come to agreement that their territories be united as one."⁸ According to some sources, the text goes on to say that,

Tibet and China shall abide by the frontiers of which they are now in occupation. All to the east is the country of great China and all to the west is, without question, the country of great Tibet. Henceforth on neither side shall there be waging of war seizing of territory.⁹

Within a couple of years of this agreement, a marriage took place between the Tibetan King and a Han (Chinese) princess. China claims that this marriage along with other meetings and alliances established "a solid foundation for the ultimate founding of unified nation."¹⁰ China also cites a marriage in 641 A.D. between the Tibetan King, Gampo and princess Wen Cheng of the Tang dynasty ¹¹ "as an indication of early Tibetan and Chinese relations. Advocates of Tibetan independence do not believe that these occurrences indicated the creation of a single state, but rather pointed to friendship and to a nonaggression pact between two equals."¹²

The next controversial period in the histories of both China and Tibet occurred in the 13th century with their subjugation to the Mongol empire. China believes that the Mongol Khanate, in changing his title to Yuan, united all of China and its regional races (including Tibetans).¹³ Advocates of Tibetan independence see this as an impossibility; "any suggestion that any of the subjugated people controlled any other is without legal or factual foundation."¹⁴ According to the Tibetan history, the Mongols, impressed by the Lamas, took the lamas to Kublai Khan (eventual emperor of China) who later adopted Tibetan Buddhism, making it the official religion.¹⁵ At this time, the priest-patron (Cho-Yon) relationship was established between the Mongols and the Tibetans.¹⁶ The Mongols eventually gave the lamas the position of Viceregent in Tibet (1249) and later gave them political authority over the regions (1254).¹⁷

In the 14th century the Ming dynasty (1368-1644) replaced the Yuan dynasty. China states that the new dynasty inherited the right to rule Tibet and conferred titles to various Tibetan heads of state.¹⁸ In contrast, those in favour of Tibetan self-determination state that Tibet gained its independence in 1354 under the leadership of a Buddhist monk while China would not gain its independence until 1368.¹⁹ Historical sources for China and Tibet disagree over the events in the Qing dynasty (Manchu) as well.

China contends that it had increased control over Tibet during the Manchu dynasty (1644-1911).²⁰ They maintain that they granted and established honorary titles, appointed administration officials, stationed their own personnel in Tibet, and had power to appoint the Dalai Lama (For further information on the office of the Dalai Lama see *Religious Background*).²¹ Supporters of Tibetan independence acknowledge the title given to the Dalai Lama by a Chinese Imperial order, but also state that the Dalai Lama gave titles to the Manchu emperor as well.²² Some Tibetan historians believe that Tibet's relationship with the Manchus, like their ties with the Mongols, did not involve China.²³ While supporting the formation of a Patron-Chaplan relationship these historians argue that the real power rested with the Dalai Lamas and not the Manchurians.²⁴

The Chinese Government argues that the Republic of China overthrew the Manchu dynasty in 1911, declaring itself a unified republic of the Han, Mongol, Hui, Tibetan, and other races."²⁵ In the Republic's first Constitution, it stated clearly that Tibet was

part of China.²⁶ For proof, it uses the fact that the 14th Dalai Lama needed the approval of the national government before he could be officially installed.²⁷ China also supports its position with the fact that it sent troops to Tibet to oppose British invasion.²⁸ During this period China also claims to have established departments in Tibet to oversee administration affairs.²⁹ In contrast to this position, those in favor of Tibetan self-determination argue that Tibet had autonomy over its internal affairs and that it dealt with other nations without the interference of China.³⁰ These advocates also maintain that the Chinese emperor had only ceremonial role in the installation of the Dalai Lama, as did other countries.³¹ Internationally, it seems as though some countries regarded Tibet as having "de facto independence from at least 1911-1950."³² For instance, Mongolia and Nepal saw Tibet as having independence before 1949.³³

Mao Zedong founded the People's Republic of China in 1949. Soon after this, he made his desire to annex Tibet apparent.³⁴ In 1950, the People's Liberation Army arrived in Tibet in order to "peacefully liberate it," protect it from "imperialists," and to aid and free the "broad masses of serfs in Tibet (who eagerly wanted to break the shackles of serfdom)."³⁵ According to the Chinese government, every ethnic group in Tibet supported this action.³⁶ After the People's Liberation Army defeated the Tibetan army and occupied much of Tibet, a Tibetan negotiating team (that apparently had no power to sign an agreement) left for Beijing in April of 1951.³⁷ During the negotiations, China gave the Tibetan delegation an ultimatum: sign an "Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet" or take the responsibility for a military advance in Tibet.³⁸ They signed the agreement, known as the "Seventeen-point Agreement,"³⁹ under the impression that it could not limit the power of the Dalai Lama or of Tibet.⁴⁰

This document authorized China's entry into Tibet and China's authority over Tibet's external affairs without changing Tibet's political system.⁴¹ It allowed for Tibetan regional autonomy and honored their religion and their customs.⁴² The Agreement also said that no internal reforms could be made without consultation with Tibetan leaders or under compulsion.⁴³ Although China asserts that Tibet signed this treaty voluntarily, the Dalai Lama quotes the Tibetan Prime Minister as referring to this treaty as "absurd" and saying that Tibetans "did not accept the agreement and the Chinese themselves had repeatedly broken the terms of it."⁴⁴

By 1954, the new Chinese Constitution replaced the provision for Tibetan autonomy, supplanting Tibet's government with a Preparatory Committee for the Autonomous Region of Tibet.⁴⁵ China's government named the Dalai Lama Chairman of this region.⁴⁶ Tension and violence escalated, in 1959, Tibet rebelled. Later that year the Dalai Lama fled the country in search of international assistance.⁴⁷ The Chinese government proceeded to dissolve the Government of Tibet; the Dalai Lama (joined by 100,000 Tibetans)⁴⁸ re-established Tibet's government from India, his

locale of exile.⁴⁹ To date, the effective ruler of the Tibet Autonomous Region has always been Chinese.⁵⁰

The Dalai Lama and the exile community had no contact with the Chinese government until after the death of Mao Zedong in 1976.⁵¹ At this time, China began to lift restriction previously imposed on the Tibetans.⁵² The People's Republic of China began to publicly acknowledge the damage caused by the Cultural Revolution, and continued to encourage Tibetans to return to their homeland.⁵³ In the following years the exile community sent fact finding delegations to visit Tibet and the Dalai Lama travelled around the world speaking on behalf of the Tibetan people. Negotiations began between the Chinese government and the exile community in 1982, but no resolution followed.

In 1987, the Dalai Lama presented his five point peace-plan in Washington D.C. on Capitol Hill in which he called for:

- i transformation of Tibet into a zone of peace,
- ii an end to China's population transfer,
- iii respect for the fundamental human rights and democratic freedoms of the Tibetans,
- iv protection of Tibet's environment (including the cessation of China using Tibet for nuclear purposes), and
- v earnest negotiations regarding the future of Tibet and the relation of its people with the Chinese.⁵⁴

In 1988, he presented the Strasbourg Peace Plan. In his proposals, the Dalai Lama never advocated complete independence from China, but "mutual benefit and respect."⁵⁵ In the same speech, he added that "if Tibetans benefit from a close relationship with China, then they may feel no need to fully separate." Many in favour of the self-determination of Tibet saw his plan as "too conciliatory"⁵⁶ while the Chinese viewed them as separatist.⁵⁷ The Dalai Lama received the Nobel Prize for Peace in 1989 for his efforts. He continues to travel and speak on behalf of Tibet. He hopes to come to a peaceful resolution; he has a "sincere desire to see China embark on a new era of peace, prosperity, and stability" with a legal "system based on the rule of law."⁵⁸

Approximately 1,30,000 Tibetans live in exile, the majority around 104,686⁵⁹, live as refugees in India.⁶⁰ Since 2 September, 1960, the exile community, has had a freely-elected representative body known as The Assembly of Tibetan People's Deputies (parliament-in-exile)⁶¹. This parliament not only governs the community, but it also "provides a model for their homeland." In years past, the Assembly only had a "formal role" so in May 1990 it was disestablished.⁶² A year later, it gained the status of a "full fledged parliamentary body with effective powers over the executive."⁶³ The Dalai Lama desires to minimise his role in this governmental system. He believes that "the people's decision will be final."⁶⁴

RELIGIOUS BACKGROUND

In general, there are three different types of Buddhism: Mahayana, Hinayana, and Lamaism. The only unifying factors among them are their desire for freedom from the pain of the material world and their belief of ancestry from India's Siddhartha Gautama (Buddha).⁶⁵ Lamaism, practiced in Tibet, differs from the other branches of Buddhism because it has a system of living Buddhas.⁶⁶ Buddhism took hold in Tibet through the wives of King Songsten Gampo (ca. 618-650): princess Bhrikuti of Nepal and princess Wen-Cheng of the Tang dynasty. Although Gampo initially arranged these marriages for political purposes, the devotion and piety of his wives eventually converted Gampo to Buddhism.⁶⁷ The princess of the Tang dynasty, also known as "Gyasa (Chinese wife)" by Tibetans, is also responsible for importing Chinese culture into Tibet.⁶⁸ The religion came into contact with the indigenous religion of Tibet, Bon (a mixture of sorcery and shamanism).⁶⁹ After initial hostility, Buddhism incorporated some Bon practices and Bon adopted some Buddhist teachings; eventually, Bon disappeared.⁷⁰

The most powerful figure in Tibetan Buddhism is the Dalai Lama. In 1578, a Mongol chief, Altan, bestowed this title on Abbot Sonam Gyatso who had come to visit.⁷¹ That abbot became the 3rd Dalai Lama and subsequently gave Altan the title "King of Dharma, Divine Purity."⁷² Some believe that the title "Dalai Lama" means "Ocean of Wisdom," and conveys the idea of a 'living Buddha.'⁷³ In contrast, the current Dalai Lama states that this title "refers only to [his] office"⁷⁴ and recognises "that certain beings, of whom the Dalai Lama is one, can choose the manner of their rebirth. Such people are called *tulkus* (incarnations)."⁷⁵

The Panchen Lama (also referred to as the Bainquen lama) holds the second most important position in Tibetan Buddhism. Mongol Chief Gushri Khan honoured Abbot Lobsang Qoigy with the title *Bainquen* (meaning great scholar in Tibetan) Pokto (meaning a wise and brave man in Mongolian) in 1645.⁷⁶ In 1713, Emperor Kangxi formalised both the title and the position of Bainquen by bestowing the fifth Bainquen, Lobsang Yexei, with the title *Bainquen Erdeni* (meaning treasure in Manchu).⁷⁷

The exiled Dalai Lama, believed to be the 14th reincarnation of the *Bodhisattva* of Compassion, holder of the White Lotus,⁷⁸ rules not only the secular realm, but the spiritual as well.⁷⁹ Monks also have a dual role, they have responsibility over both religious and civic affairs such as education.⁸⁰ Buddhism, a theocratic religion,⁸¹ "permeates every aspect of Tibetan life."⁸² Tibet has an "unusual" connection between religion and government⁸³ which causes Tibetans to see China's rule over their region as an "assault on their very identity as a distinctive Buddhist society."⁸⁴ Until 1950, Buddhism saturated Tibetan life (including literature, art, music, and academics).⁸⁵ One-fifth to one-third of the country's resources sustained religious purposes as well as the monks and the nuns who made up one-sixth of the population.⁸⁶ From 1950-1959, the "Seventeen-

point Agreement" would direct religious law in Tibet. Point seven of this document states:

"The policy of freedom of religious belief laid down in the common programme of the Chinese People's Political Consultative Conference shall be carried out. The religious beliefs, customs, and habits of the Tibetan People shall be respected, and lama monasteries shall be protected. The central authorities will not effect a change in the income of the monasteries."⁸⁷

Many supporters of Tibetan independence do not believe that this document was honoured. They find China's true policy revealed in a story told by the Dalai Lama. The Dalai Lama met Mao Zedong in 1954. The leader of the People's Republic of China said that "Buddhism was quite a good religion, and Lord Buddha, although he was a prince, had given a good deal of thought to the question of improving the conditions of the people."⁸⁸ However, in a subsequent meeting, Mao Zedong referred to religion as "poison. It has two great defects: It undermines the race, and secondly it retards the progress of the country. Tibet and Mongolia have both been poisoned by it."⁸⁹

Tensions between the Tibetans and the Chinese government escalated leading to the 1959 uprising; after which both sides refused to honor the "Seventeen-point Agreement."⁹⁰ By this time, China viewed religion as their primary hindrance to controlling Tibet.⁹¹ Apparently, this increased hostility prompted China to initiate their "democratic reforms" ahead of schedule.⁹² China said that these reforms would end the "exploitation of serfs" and "disentangle religion from politics."⁹³ Advocates of Tibet's self-determination see the reforms as having destroyed monasteries, deprived monasteries of land, and executed or expelled thousands of monks.⁹⁴ The Government of China also placed the monasteries into categories, those that supported the rebellion and those that did not.⁹⁵ Those that did not support the 1959 rebellion would receive compensation for land or goods lost to the State.⁹⁶ The conditions in Tibet led the International Commission of Jurists to the following conclusions in 1960.

- a) that the Chinese will not permit adherence to and practice of Buddhism in Tibet;
- b) that they have systematically set out to eradicate this religious belief in Tibet;
- c) that in pursuit of this design they have killed religious figures because their religious belief and practice was an encouragement and example to others;
- d) that they have forcibly transferred large numbers of Tibetan children to a Chinese materialist environment in order to prevent them from having a religious upbringing.⁹⁷

China's control over religion in Tibet increased from 1965 to 1972, making religious laws more confining. In this period, known as the Cultural Revolution, Mao Zedong wanted to eradicate the "Four Olds - old ideas, old culture, old customs, and old habits."⁹⁸ He hoped to replace the "olds" with the "four news" - "Mao's new ideology, proletarian culture, and communist habits and customs."⁹⁹ During this period, China banned religious activity, destroyed religious items, forced monks to copulate in public and to marry, executed monks, and sent monks away to inconspicuous concentration camps.¹⁰⁰ The Government of China believes that it was the Tibetan members of the Red Guard who pillaged and destroyed the monasteries. In any event, the number of monasteries dropped drastically. In 1959, more than 2,463 monasteries existed¹⁰¹ (some estimate as many as six thousand),¹⁰² but by 1966 only 553 functioned and by 1976 only 10 remained.¹⁰³ In the mid-1970s, this repression abated, with the death of Mao Zedong and the end of the Cultural Revolution.¹⁰⁴

In 1972, the Chinese government began supporting the "four freedoms - the freedom to worship, to buy and sell privately, to lend and borrow with interest, and to hire labourers or servants."¹⁰⁵ Temple restoration also began at that time.¹⁰⁶ The Dalai Lama, once referred to in Chinese propaganda as the "chieftain of the Tibetan religious bandits, an executioner, with honey on his lips and murder in his heart;"¹⁰⁷ received an invitation to return to Tibet.¹⁰⁸ Five years later, the newly elected chairman of the Communist Party allowed for a revival "of Tibetan customs, including religious ones."¹⁰⁹ The government also released the Panchen Lama, after 14 years of imprisonment.¹¹⁰ Another promising event occurred in 1980 when the Communist Party General Secretary, Hu Yaobang, visited Tibet.¹¹¹ The conditions in Tibet "distressed" Hu who subsequently supported increased religious and cultural freedom for Tibet and a minimizing of the previous suppression policies.¹¹² He also compared conditions to that of "colonialism" and planned to have 85% of the Chinese settlers removed from Tibet.¹¹³ In 1982, religious artifacts were returned to their original locations although those supporting Tibetan independence believe that China still possesses many of them.¹¹⁴

Currently, some personal religious and cultural expression is permitted,¹¹⁵ but the government will not permit religious activity that advocates Tibetan independence.¹¹⁶ Tibetans can practice religion at certain locations, but the Chinese government will not permit religious gatherings or organisational activities beyond state control.¹¹⁷ Religious activity has "surge[d] in Tibet partially because expressing faith in the *dharma* (teachings of Siddhartha, the founder of Buddhism)¹¹⁸ is a way to express nationalism without being branded a 'separatist.' This phenomena is straining Beijing's ability to implement lenient policies toward religion, given their obsession for quelling centres of power outside the Communist Party."¹¹⁹ Government retains strict control over the

monasteries, the number of monks is between 5 and 10% of the number existing in 1949-50.¹²⁰ About 200 monasteries have reopened.¹²¹ Beijing has contributed billions of renminbi (Chinese currency) over the past twenty years in order to "defuse separatist movements, to amend devastation of the Cultural Revolution, to restore monasteries, to establish 'patriotic' Lamaist schools, and to print Tibetan-Buddhist scriptures."¹²² This is the highest level of government aid per capita into a region under China's control.¹²³

According to some reports, China's tolerance towards religion, since 1994, has decreased while the Chinese government attempts to minimise support for the independence movement.¹²⁴ In 1995, the head of the Communist Party for the TAR said that the government "must, in accordance with the laws, regulations and policies, manage and supervise religious affairs."¹²⁵ In doing so, the government intends to "... deepen the exposure and denunciation of the Dalai clique..." and to "forbid the Dalai to use monasteries as strongholds for conducting splittist activities..."¹²⁶ Restrictions now placed on Tibetans include: compulsory political indoctrination in State schools as well as schools in monasteries and nunneries, prohibition of educating young Tibetans in India, prohibition of monks and nuns under 18 years old, banning of pictures of the Dalai Lama, denial to Communist Party members and state employees of participation in religious activities or of possessing religious objects.¹²⁷ Additionally, the Chinese government will not permit the reconstruction of more monasteries destroyed during the Cultural Revolution.¹²⁸ Reports also indicate that monks and nuns must sign a statement that denounces the independence movement and the "Dalai clique."¹²⁹ Only patriotic supporters of the Communist Party may serve on management committees of monasteries and temples.¹³⁰

CONSTITUTIONAL PROVISIONS AND LEGISLATION RELATED TO RELIGION¹³¹

*Constitution of the People's Republic of China (1982)*¹³²

Article 36: Citizen of the People's Republic of China enjoy freedom of religious belief. No state organ, public organisation or individual may compel citizens to believe in or not to believe in, any religion; nor may they discriminate against citizens who believe in or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens, or interfere with the educational system of the state.

Religious bodies and religious affairs are not subject to any foreign domination.

*Constitution of Tibet (1963)¹³³**Religious Freedom - Article 17*

- i All religious denominations are equal before the law.
- ii Every Tibetan shall have the right to freedom of thought, conscience and religion. The right includes freedom to openly believe, practice , worship observe any religion either alone or in community with others.
- iii Freedom to manifest one's religion or beliefs and to deal with any matter relating to religious or charitable purpose whether alone or in community with others shall be subject only to such limitations as are prescribed by law and are necessary in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Penal Code of the People's Republic of China¹³⁴

Article 147: "State officials who violate the freedom of worship of citizens or the customs of national minorities are punishable in serious cases by imprisonment for not more than two years or by a short term of imprisonment. Any person who forcibly prevents legal religious activities, compels believers to abandon their religion, compels a citizen to practice any form of worship, illegally closes or demolishes legal places of worship or other religious premises is violating democratic rights and individual freedom and failing in his duty and is punishable by law."

"Provisions governing the religious activities of foreign nationals within the frontiers of the People's Republic of China" ¹³⁵ [31 January 1994, promulgated by the Council of State Decree, No.144]

In *Article 1* it says that this document "protect[s] the freedom of religion of foreign nationals in China." *Article 3* and *Article 4* stipulate that foreign nationals may participate in religious activities that occur in areas recognised as appropriate by the Office of Religious Affairs. *Article 6* states that foreign nationals may bring religious publications as long as they do not bring more than "what they require for personal use." According to this article, "the entry of any document of a religious character" which may sway the Chinese public is not allowed. *Article 8* states that nationals must obey Chinese law and regulations. It also prohibits nationals from "establish[ing] religious organisations, liaison offices, venues for religious activities, or non-religious schools and institutes within China; they are not allowed to recruit believers among the Chinese citizens, appoint clergy or undertake other evangelist

activities. Article 9 states that foreign nationals participating in the above mentioned practices are punishable by Chinese law.

*"Regulation concerning the functioning of places of worship"*¹³⁶ (31 January 1994, promulgated by Council of State Decree No. 145)

This document guards "normal religious activities." Articles 6, 7 and 8 secure the right of religious organisations to accept gifts, to sell religious objects, and to supervise their assets and gifts. Article 3 stipulates that the "legal rights and the normal religious activities .. will be under the protection of the law, and no organisation or person will be permitted to transgress or interfere. Article 2 states that "places devoted to religious activities" must be reported to the authorities as stipulated by the government Office of Religious Affairs. Activities that "harm national unity, ethnic unity or the social order, harm citizens' health or destroy the national education system" are forbidden, as stated in Article 4. According to Article 15, those committing these offenses are punishable by law.

Regulations Governing Public Offences (January 1987)¹³⁷

In May 1994, the National People's Congress added 18 articles, three of which affect religious groups. The three pertain to "carrying out activities under the name of a social organisation without registration," "organising activities of superstitious sects and secret societies to disrupt public order" and "disturbing public order and damaging people's health through religious activities."

Document 19 (March 1982)¹³⁸

"The Basic Viewpoint and Policy on the Religious Question during our Country's Socialist Period".

This document is the "most definitive statement on religion and religious issues ever issued by the Chinese Communist Party"; it provides cadres with "correct and effective methods" for implementing religious policy.¹³⁹ Art. III of the document states that the government's task is to "firmly implement and carry out its policy of freedom of religious belief; to consolidate and expand the patriotic political alliance in each ethnic religious group; to strengthen education in patriotism and Socialism among them, and to bring into play positive elements among them in order to build a modern and powerful Socialist state and complete the great task of unifying the country; and to oppose the hegemonism and strive together to protect and preserve world peace. It also states the necessity for the government to "sum up and assimilate the historical experience, positive

and negative of the Party in religious work since the founding of the People's Republic."¹⁴⁰

Rules for the Democratic Management of Temples (enacted by the People's Congress of the Tibet Autonomous Region).

No known copy of this document exists in the West; however, the Communist Party Chief of Tibet (*Hu Jintao*) says that these rules form the foundation of temple management in the Tibet Autonomous Region.¹⁴⁰

Regulations on the Protection of Relics (Enacted in 1990 by the People's Republic of China)

This document consists of 48 articles and states that the state has ownership of all religious relics.¹⁴¹

GOVERNMENT DEPARTMENTS¹⁴²

United Front Work Department

This department develops and carries out religious policy. The Central Committee and Politburo (highest Party authorities) "guide and authorise" religious policy.

State Council (highest governmental authority)

The Council head the departments that enforce religious policy, the Religious Affairs Bureau and the Tibetan Buddhist Association. The Party still has supreme authority.
Religious Affairs Bureau (RAB)

This is the chief administration office of religious policy in China and Tibet. It acts as an intermediary between religious organisations and the government.¹⁴³ Document 19 states that "all places of worship are under [its] administrative control."¹⁴⁴ Operational in 1956, out of commission during the Cultural Revolution, re-established in 1978, this organisation is now led by a member of the Communist Party. Its responsibilities include: directing restoration of monasteries damaged during the Cultural Revolution, administering the finance for such projects, and reviewing the applications for entrance into monasteries.

Some sources say that this organisation has a role in limiting the number of monks.¹⁴⁵

The Tibetan Buddhist Association (TAB)

This association was established in 1957 as a regional branch of the Chinese Buddhist Association (CBA). Both the CBA and the TBA were banned during the Cultural Revolution and re-established in 1981. The TBA acts as an intermediary, it makes suggestions and relays complaints to the RAB office, United Front, and the Central government. This organisation, along with the RAB plays a role the "Buddhist Colleges" established by the Chinese government. These colleges desire to "create a contingent of young religious personnel who in terms of politics, fervently love their homeland and support the Party's leadership and the socialist system and who possess sufficient religious knowledge."¹⁴⁷ This system is in contrast to the traditional Buddhist "colleges" which fostered the study of different texts and debate among students.¹⁴⁸

Tibetan Guidance Committee

According to Jing Jai, in *100 Questions About Tibet* ¹⁴⁹ the government has formed this committee to direct Buddhism in Tibet, Qinghai, Gansu, Sichuan, and Yunnan. This new committee will carry out government policies, direct education of monks and nuns in the 'patriotic mold,' and supervise monastery management.

Democratic Management Committees (lowest level, in all major monasteries)

Established in 1957, the DMC is the "highest authority of a monastery and the principle organ with overseeing the operation of its affairs."¹⁵⁰ According to Chinese government, "the committee, elected by all monks in the monastery on the basis of full consultation, is responsible for overseeing the monastery's Buddhist activities, its repair and upkeep, selecting administrative personnel and any work that goes on."¹⁵¹

According to some sources, the DMC, controls monastery finances.¹⁵² Document 19 states that income received by temples and churches (alms and donations) "can be used mainly for maintenance and that if these contributions are 'freely offered and small in quantity' the government will not interfere."¹⁵³

Some believe that because of the DMC's control over the monasteries, the elders can no longer "sufficiently control the schedule, atmosphere, curriculum and discipline of the monks; this has had effects on monk education as well as religious activities (The DMC requires monks to work eight hours a day, six days a week)."¹⁵⁴

REPORTED CASES OF RELIGIOUS/POLITICAL INTOLERANCE

Presently, Tibetan prisons house at least 628 (some sources estimate as many as 700¹⁵⁵) political prisoners, the majority are prisoners of conscience ("people imprisoned, detained or otherwise physically restricted by reason of their political,

religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour, or language, provided that they have not used or advocated violence").¹⁵⁶

In September 1995, the Dalai Lama did not receive an invitation to the interfaith prayer service of the United Nations 50th anniversary, held in New York, because of the People's Republic of China's opposition to it. Similarly in 1993, China protested against having the Dalai Lama speak at the Conference on Human Rights in Vienna. As a result, he spoke at a different location.¹⁵⁷

In May 1995, the Chinese Government would not recognise the Dalai Lama's choice of Gedhun Choekyi Nyima as the 11th Panchen Lama and subsequently chose Gyaincain Norbu to succeed the 10th Panchen Lama.¹⁵⁸ C. Rinpoche, appointed head of the search party for the Panchen Lama, advocated the use of traditional Tibetan practices and the input of the Dalai Lama in the selection process.¹⁵⁹ Because of this the Chinese government arrested him and his secretary in May 1995, detaining them for 12 days.¹⁶⁰ In June 1995, C. Rinpoche's business manager was detained and accused of contact with the Dalai Lama.¹⁶¹ The young boy chosen by the Dalai Lama as the reincarnation of the 10th Panchen Lama has vanished along with his family.¹⁶²

In February 1995, Chinese police raided the Nalanda monastery because one of their members had been caught wearing a pro-independence badge. The monks protested leading to a second raid by People's Armed Police resulting in the arrest of forty monks. Some reports say that senior Nalanda monks planned a pro-independence demonstration for March. Authorities sent a re-education "work team" to the monastery and those nearby. Sixty-four of the 140 registered monks were expelled.¹⁶³

In November 1994, during a visit to Tibet by the U.N. Special Rapporteur on Religious Intolerance, the first human rights official to visit Tibet, the Chinese government would not permit Tibetans to meet him. China also prohibited monks and nuns from entering major monasteries and temples while also using military helicopters to intimidate the Tibetans. Four monks were arrested for protesting (Dinah Pokempner p.2 states the arrest of fourteen monks who had previously attempted to contact the Special Rapporteur and subsequently protested political interference with religious affairs) one week after the Special Rapporteur's visit.¹⁶⁴

In June 1994, a twenty year old nun, Phuntsog Yangkyi, died with a brain injury. During her five year term, prison guards punished her and other nuns for singing in celebration of the new year festival, Losar. Some sources indicate that it was during this punishment that P. Yangkyi received the fatal injury. Chinese authorities denied the torture allegations and stated that she died of "cerebral tuberculosis." According to medical sources, this illness does not result in death with adequate treatment.¹⁶⁵

In January 1994, eleven nuns were sentenced to two to seven years imprisonment for their participation in a pro-independence demonstration that occurred in 1993.¹⁶⁶

Sources from Lhasa indicate that the arrest occurred before a protest took place; on 14 June 1993, no demonstration in or near Lhasa was reported.¹⁶⁷

Jampa, a monk or cook from Ponda Monastery, was convicted of "counter-revolutionary propaganda and incitement in November 1993." He received a four year sentence and a three year deprivation of his political rights. In July, he supposedly wrote and posted "reactionary slogans."¹⁶⁸

A 45 year old woman received a two year "labour re-education" sentence in November 1993 for refusing to close her house church.¹⁶⁹

In October 1993, fourteen Buddhist nuns received additional sentences (as much as nine years) because they composed and recorded songs in praise of the Dalai lama and the independence movement while in prison. Chinese authorities convicted them of "spreading counter-revolutionary propaganda."¹⁷⁰

In October 1993, Guo Mengshan received a three year "labor re-education" sentence for "itinerant preaching. Officially, G. Mengshan was convicted of holding "New Believers Edification' training classes." With him, two others were also arrested, Liu Wenjie and Zheng Lanyun."¹⁷¹

On 10 September 1993, three of eight preachers and laymen (D. Guiliang, G. Xinliang, and D. Lanmei) received sentences of "labor re-education." Allegedly the three had "conspired together using their belief in the 'Spiritual Truth' sect to proclaim" the imminence of tribulation thereby "causing believers to stop participating in production," "organised a 'Preachers' Training Class"; hosted a 'Gospel University' session that trained 36 people; and had a 'Fellowship Prayer Meeting.' They "seriously interfered with production and social order."¹⁷²

In June 1993, two nuns (Gyaltzen Tsultrim and Ngawang Yangkyi) along with four other men were arrested for their efforts to lead a demonstration.¹⁷³

In May 1993, Gendun Rinchen and Lobsang Yonten were arrested for allegedly "stealing state secrets" and participating in "separatist activities."¹⁷⁴ Rinchen says that the police searched his house and confiscated his belongings without a warrant. The police claimed that this typewriter was the "tool of a spy."¹⁷⁵ Both Rinchen and Yonten were released in January of 1994 without a trial.¹⁷⁶

In May 1993, fourteen individuals were arrested for their participation in a demonstration on the first day of the Tibetan New Year in which they shouted independence slogans and advocated the return of the Dalai Lama.¹⁷⁷

In 1992, Sherab Ngawang, a twelve year old girl, along with four nuns and one monk, was arrested for holding a brief protest in Lhasa as the governor of the Tibet Autonomous Region and high officials prepared to visit the Darkor police station. Some reports indicate that the young girl was beaten severely with electric batons and plastic tubes filled with sand. S. Ngawang died in February of 1995 shortly after her release.¹⁷⁸

In the Spring of 1990, Lobsang Tsonдру (the oldest known political prisoner in Tibet), received a six year sentence for participating in "illegal separatist activities."

A year later, reports say that he and other prisoners received severe beatings from prison guards, afterwards Tsonдру was placed in solitary confinement for five months. In 1993, reports indicated that he had heart disease.¹⁷⁹

In 1989, Yeshe Ngawang, a monk, received a five year sentence for participating in a pro-independence demonstration. He was beaten and placed in solitary confinement two years later for protesting the beatings and the transfer of five other prisoners who attempted to give a letter to James Lilley, a visiting U.S. ambassador.¹⁸⁰

In 1989, Badro, a monk from Ganden Monastery, along with five other Tibetans, were tried for engaging in pro-independence demonstrations. Badro received a three year sentence, one received a suspended death sentence, other were sentenced for up to 20 years imprisonment for allegedly participating in causing the death of a Chinese policeman during a 1988 independence demonstration. Badgro says that the evidence used against the defendants came from confessions made under torture.¹⁸¹

In November 1989, Ngawang Phulchung, a lama from the Drepung Monastery, received a 19-year sentence and the loss of his political rights for five years. According to the Chinese government, he established an illegal "Independence of Tibet" organisation, collected State secrets, produced and distributed material advocating Tibetan independence, and participated in the Lhasa riots in March 1989. He committed "gross violations of national security and of the penal code."¹⁸²

In November 1989, Jampel Chnagchub, a lama from the Drepung Monastery, received a 19 year sentence and the loss of his political rights for five years for his participation in the activities of an illegal separatist organisation and for collecting State secrets.¹⁸³

In October 1989, Phuntsog Nyidron and five other nuns held a peaceful demonstration after they learned that the Dalai Lama had received the Nobel Peace Prize. Officials kicked the women, beat them with iron rods, shocked them, and suspended them from the ceiling by their handcuffed hands. Nyidron was one of the fourteen nuns who had their sentences increased for composing and recording pro-independence songs on a tape recorder; her sentence totals seventeen years.¹⁸⁴

Jigme Sangpo, a former primary school teacher, received several sentences from 1963 to 1991 totalling 28 years. In 1988, he received a five year sentence for shouting pro-independence statements while incarcerated. In 1991, he was put in solitary confinement and given an eight year increase in his sentences because he shouted slogans during an ambassador's visit.

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6. TIBET'S RIGHT TO SELF-DETERMINATION

CYRIAC MAPRAYIL

I had the pleasure of going through Dr. B.C. Nirmal's clear, concise and enlightening paper: Tibet and the Right of self-determination. On page one para 2 Dr. Nirmal writes: "If it can be established that on the critical date 1950, the date on which Chinese troops invaded Tibet and occupied it, Tibet was an independent state which many studies clearly show, then the Chinese occupation of Tibet becomes not only illegal but it even constitutes aggression." I would like to elaborate on this.

STATUS OF TIBET - THE HISTORICAL PERSPECTIVE

Britain and Russia were rivals in Europe as well as Asia and they competed with each other to enter into treaty relations with strategically placed small countries to ensure that they excluded the other. Tibet which bordered British India was one such strategically placed country which Britain wrongly believed was under Chinese control misled by the presence of Chinese advisors in Tibet's Capital. Therefore, the British Government sought Chinese permission to establish relations with Tibet in view of forestalling Russian influence there and that happened in the 1876 Agreement between Britain and China.

Tibet refused to honour whatever was agreed between Britain and China and ruled out permission for a British mission to Lhasa. Unaware and unwilling to find out the exact nature of the relationship between China and Tibet, Britain continued to liaise and enter into treaties with China in 1890 and 1893 to settle British India's border with Tibet, and Tibet in turn, being not party to those treaties continued to ignore them; and thereby practically declaring its independent status *vis-a-vis* the Chinese Emperor and the British Government.

It is in this context that Britain sent troops to Tibet and, imposing its own terms, concluded the 1904 treaty with Tibet making it a protectorate which practically meant control of its trade, border and foreign relations. Again, in 1906 Britain

entered into a treaty with China giving the latter the same rights which it had allocated for itself under the Terms of the 1904 Treaty. This was followed by the 1908 tripartite treaty, also initiated and instigated by Britain, involving Tibet, China and Britain. But the Chinese did not want to share Tibet with anyone else not even with Britain and, therefore, she invaded it in 1910. But following the fall of the Manchu Empire in 1911 Tibet expelled all Chinese officials and in 1913 entered into a treaty with Mongolia and, subsequently, both Tibet and Mongolia proclaimed their independence from China. Since 1913 Tibet was fully independent in theory as well as in practice until Communist China invaded and annexed it. Due to World War worries in Europe, Britain adopted an unusually pragmatic approach to her problems elsewhere especially in Asia and, therefore, she organised the Shimla Convention of 1914 with a view to diffusing tension on British borders including potential conflict between China and Tibet in which Britain might be drawn into. Although the negotiations took place among all the three, and Britain and China were to be the co-protectors of Tibet's territorial integrity, China did not sign the agreement — an agreement, of course, can be binding only on those who signed it. Tibet, thus, became a British protectorate under the Convention.

As far as Britain was concerned Tibet was an Independent country. Tibet did demonstrate the extent of its independence when it refused to allow military supplies to pass through its territory during the II World War. It could not have done that if Tibet — China relationship was like that of a vassal towards its suzerain. Besides, Tibet directly dealt with foreign countries including Britain, India, Nepal, etc.

Therefore, it follows that Tibet was an independent and sovereign country like any other until the Chinese People's Republic invaded, annexed and declared it to be part of its own territory. Chinese tried to justify its above actions stating that Tibet always belonged to it and that all that has happened was an assertion of its claim.

Although countries big and small knew that China's action in Tibet was unfair and outrageous, not everyone except its immediate neighbours, India and Nepal knew all the details of the background and context of the Chinese claim. Although India's deliberate policy of protecting China's international image made her unable to speak up for Tibet, the International Commission of Jurists after studying the claims and counter claims concluded that Tibet was an independent country in 1912.

When Communist China violated that independence, and Tibet appealed to the UN., "the Governments of the United Kingdom and India, far from supporting the Tibetan appeal to the United Nations, took a leading part in obstructing it. The conduct of the Indian and British Governments amounted to an evasion of their moral duty to make plain what they alone had special reason to know - that there was no legal justification for the Chinese Invasion of Tibet." (See *Tibet and Its History* by Hugh E Richardson. p. 186).

Shri L.L. Mehrotra's closely argued paper on the same theme concludes that Tibet-China Agreement of 1951 could not have been legally valid. I wish to elaborate on this.

STATUS OF TIBET - THE LEGAL PERSPECTIVE

It must be absolutely obvious that historically Tibet was functioning as an independent state since the 1911 revolution in China. Although Dalai Lama announced Tibet's independence in 1912 and it had all the prerequisites for recognition he did not campaign for international recognition. However, the British Government, the most important power in Asia at that time, did not consider Tibet to be any less independent than any other side.

When Kuomintang Government fell and Tibet asked all Chinese representatives to leave Tibet, that act alone made it amply obvious to everyone that China had no suzerainty over Tibet. Besides, the act of instructing the Chinese representatives to leave the country in itself was enough to sever all existing contractual ties with China. Tibet was entitled to do so because the basis of existing contract had changed when the Chinese Government went through a process of unanticipated revolutionary changes. Such changes did take place in China in 1911 as well as in 1949.

After the annexation, the Chinese made the Tibetans to sign a treaty in 1951. Although it allowed a degree of autonomy China kept for itself Tibet's defence and foreign relations. Tibet signed the treaty against its will because the treaty was imposed on Tibet after its military defeat.

Vienna Convention on the law of Treaties under article 52 makes any treaty signed under duress to confirm the occupation of a country null and void. The fact that Tibet signed the treaty under pressure became public knowledge when Dalai Lama himself repudiated it in June 1959.

Since the UN. Charter under Article 2(4) prohibits the use of force, annexation and even *de facto* exercise of sovereignty over Tibet does not bring with it legitimacy or validity. Again, the fact that some countries consider Tibet to be part of China does not make China's invasion and control of Tibet valid under international law according to the UN endorsed Stimson Doctrine which bans recognition of territory acquired by force.

In addition to all that has been said above, one should ask oneself: if China considered Tibet to be part of its territory what is the logic behind repeatedly inviting Tibetans to join the 'Motherland' as the fifth race of China?

Again, although the British with their Machiavellian approach kept reminding the Chinese of their 'suzerainty' over Tibet they never could have attached any substance to that concept. In other words, all that they meant at best was that the Chinese had an interest in Tibet *rather than that it owns it*. Otherwise, why is it

that she kept entering into treaty agreements that would keep everybody out of Tibet except Britain itself? Again, why did the Chinese called the military occupation of Tibet an act of 'peaceful liberation' if Tibet was already part of it?

When Professor Dhokalia in his excellent and elaborate paper writes in the concluding para that, "the claim of self-determination of six million peaceful Tibetan people, who are struggling for their very survival and preservation of distinct identity in occupied Tibet, is a case of liberation and secession from the remote, imposed, authoritative, exploitative and undemocratic Chinese Empire", one is reminded that the Human Rights Perspective is stronger then any and more relevant today that at any time before. I would like to elaborate on this.

THE WAY FORWARD FOR TIBET: THE HUMAN RIGHTS APPROACH

The Chinese occupation of Tibet has since 1949 exercised the minds of many students of current affairs, and presented the United Nations with one of its most intractable problems. Although the issue arising out of Tibet's position have, in the past, been endlessly analysed from a variety of perspectives and many solutions put forward, the Chinese remain firmly entrenched in the country and, in spite of international outcry, continue steadily to implement their policies. The question reduce intellectually self-determination appears to most scholars and statesmen to be central to the international conundrum that Chinese invasion and occupation have created in Tibet. As self-determination is frequently seen in a political context, the search for an answer to Tibet had tended to emphasise the political aspects of the problem.

In this paper it will be argued that the quest for an answer to the problems of Tibet, including the vexed question of self-determination, could much more profitably be sought through a Human Rights approach that recognises and utilises the human rights excesses inflicted on the Tibetans. The view will be propounded that once it is established that Chinese rule in Tibet is synonymous with human rights violations, the basis for an argument for self-determination will have been created. This approach has the advantage of shifting the arguments around Tibet onto new ground and generating fresh momentum into old issues.

Throughout the decades of Chinese military occupation, there have been systematic abuse of human right in Tibet. Setting the deprivation of the Tibetan people's right to self-determination entirely to one side, a range of other human rights abuses remain. These include systematic discrimination in housing, employment, health care and education; denial of freedom of expression, including the rights of thought and conscience; denial of freedom of assembly and association; denial of freedom of practice of religion; and denial of freedom to travel. In addition, there have been widespread arbitrary detention, torture in custody; and even execution

for peaceful protest. There have also been reports of the stripping of the economic resources of Tibet for the benefit of China. In fact, it is impossible to list and analyse the large and disturbing mass of information on human rights violations in Tibet by the Chinese authorities.

The above abuses have been widely documented and supported by countless statements and testimonies, particularly under the auspices of the international Fellowship of Reconciliation. Human rights abuses were exacerbated by the imposition of martial law in Lhasa in March 1989. Although martial law has been nominally lifted China's human rights record in Tibet remain abysmal. Nevertheless, the Tibetans have at no stage abandoned their demand for self-determination, and have to date strenuously resisted Chinese rule.

Several United Nations General Assembly Resolutions have expressed 'grave concern' at human rights violations as well as the suppression of the distinctive cultural and religious life of the Tibetans. The Fortieth Session of the Sub-commission on Prevention of Discrimination and Protection of Minorities held in 1988 is typical of a number of conferences and sessions that continue to express disquiet at Chinese violation of human rights in Tibet. At the Fortieth Session several leading human rights organisations considered the human rights situation in Tibet, and charged the People's Republic of China with continued repression. The discussion also touched on Chinese colonisation of Tibet, discrimination in employment and systematic destruction of the Tibetan religion and culture. Again the proceedings at the Fortieth Session reflect the concerns and discussion of similar bodies and organisations and show continuing international dissatisfaction with China's treatment of the people of Tibet.

The scale and magnitude of human rights violations in China have, therefore, been conclusively established: vast amount of evidence have been accumulated to show the fact human rights infringement in Tibet; and much has been written to show how such infringements violate international conventions. The argument, therefore, ought not to be whether there are still human rights violations in Tibet, but whether proven human rights violations of a persistent and irresolvable nature can constitute the basis for demanding Chinese withdrawal from Tibet.

DEVELOPING HUMAN RIGHTS ARGUMENT AGAINST CHINESE RULE

Once the range and amplitude of atrocities committed by China in Tibet are established the question arises whether a cogent case can be made for using large-scale, persistent and gross human rights violations as a basis for demanding Tibetan freedom. In doing so we will be departing slightly from the familiar arguments of China's withdrawal from Tibet which are usually based on historical and legal arguments. Instead, we highlight the fact that given the scale and persistence of

Chinese atrocities in Tibet as well as the continuous and active resistance of the Tibetan people, China is to all intents and purposes incapable of governing the country. A corollary of this argument is the view that unless China withdraws completely from Tibet, the Tibetan people will be permanently deprived of their human rights.

Further, it has to be highlighted that the policy of promoting large-scale Chinese settlements in Tibet is not only a threat to Tibetan civilisation but also is, together with the denial to the Tibetan people of participation in economic, social, political and cultural life likely, in the long-run to undermine and destroy even the concepts of Tibetan nationhood and right to development.

China's pursuit of the so-called policy of the economic opening up of Tibet with its concomitant devise of outnumbering of Tibetans by Chinese immigrants has to be seen as crucial part of this process.

As has been shown, deprivation of human rights in Tibet has been severe and persistent in every aspect. Indeed, the Chinese government has itself acknowledged gross human rights violations in Tibet during the Cultural Revolution. Elsewhere in the world claims to secession have often been based, amongst other things on the denial of human rights that in the majority of cases were less severe than those in Tibet. It would, therefore, appear that even if China could justify its claims to Tibet on other grounds, separate statehood by way of secession or other avenue might be a solution to Tibet's problems. It is acknowledged that this argument overlooks the rather difficult question of how a separate state might be established in Tibet's case, the examples of Eritrea and Bangladesh suggest that such an approach may eventually be effective. As is well-known, Tibet has all the attributes of a nation state, including a well-defined territory although faced with military invasion and consequent occupation as well as institutionalised discrimination by China, its powerful neighbour, it finds itself in a situation where all avenues to a peaceful political solution are closed. The Tibetan people have under the leadership of the Dalai Lama pursued diplomacy, nonviolence and other peaceful means.

A human rights-based argument for separate Tibetan statehood can be further premised on the 1993 Vienna Declaration and Programme of Action on Human Rights. This has recognised the right of people under colonial or other forms of alien domination to take any legitimate action in accordance with the Charter of the United Nations to realise their inalienable right to self-determination.

The 1993 Vienna Declaration, however, stresses that its provisions should not be interpreted as authorising actions which result in the dismemberment of the territorial integrity or political unity of a nation-state. There remain compelling reasons why Tibet's claims to self-determination can still be based on the 1993 Vienna Declaration. It can, for instance, be argued that where Tibet bases its claims to self-determination on the 1993 Vienna Declaration it might also link its claims to its

previously separate statehood, in which case the argument would really revolve around the view that Tibet is in fact not part of China.

Besides, as Chinese human rights abuses in Tibet seem to be based on racial and other discrimination, in violation of the Convention on the Elimination of All forms of Racial Discrimination, a related argument can be advanced that the forms of human rights deprivation presently evident in Tibet would be speedily eradicated through the re-establishment of Tibetan statehood.

AN ACTION PLAN

Once the international community recognises that the people of Tibet need to be rescued from the oppressive rule from Beijing at least for humanitarian and human rights reasons if not for any other, it goes without saying that the same international community can and will find a way to achieve that.

The following tasks, however, should constitute the essential ingredients of an action plan:

1. Set up Tibet support groups in every country which will educate the public by highlighting the human rights violations of the Peking regime within China generally and within the Chinese occupied Tibet in particular. This has to be done nationally as well as internationally through the media (press, radio and T.V.), public meetings/conferences, publications, etc. This has to be done with the help of trade unions, student unions, women's groups, etc.
2. Lobby members of parliament regardless of whether they belong to the ruling party or not supplying them with adequate up-to-date information on human rights violations in Tibet so that they will eventually become sympathetic and committed to the Tibetan cause with their governments which in turn would take it up at the UN and other relevant international bodies/fora which are concerned about human rights violations.
3. Get enough members of the UN General Assembly to pass a resolution supporting self-determination for Tibetans in view of their human rights violations by the peoples Republic of China.
4. Publish books under the following titles:
 - Tibet's right to sovereignty — the historical perspective
 - Tibet's right to sovereignty — the legal perspective
 - Tibet's right to sovereignty — the human rights perspective
 - Tibet's viability as a nation-state.
5. Lobby the British Government as well as the US Government so that they will approach the PRC for a *Quid Pro Quo* vis-a-vis Tibet in view of the British Government's withdrawal from Hong Kong.

6. Promote all those strategies and techniques which can embarrass, if not isolate the Peking regime adopting some of the techniques used by the Anti-apartheid movements all over the world including the boycotting of Chinese sports and games outside the PRC.
7. The Tibetan Government in Exile should pursue ways and means of getting recognised by countries and setting up missions there just as the PLO used to do.
8. The Tibetan Government in exile should continue its attempt to enter into dialogue with the PRC.
9. Try to influence and educate public opinion within China in favour of self-determination for Tibet.
10. Try to influence and educate public opinion within India in favour of self-determination for Tibet so that the Government of India could decisively get off the fence.

7. SELF-DETERMINATION FOR THE TIBETAN PEOPLE: A POLITICAL ARGUMENT

MIRA SINHA BHATTACHARJEA

The right of the Tibetan people to self-determination is today a matter of wide international interest and concern. Tibet support groups and information networks have mushroomed. Some seven hundred of them are scattered across many countries though they are concentrated mainly in Europe and America. Parliaments pass resolutions upholding this right; international organisation do likewise and government leaders voice their concern and sympathy for Tibet to their Chinese counterparts. The Dalai Lama, as the spiritual and political head of the Tibetan people symbolizes both their plight and their distinct cultural spiritual identity, is received with honour wherever he visits. Ironically, however, as support for the Tibetan cause grows and becomes more articulate, criticism of China as Tibet's 'other', becomes more strident. Indeed, it is difficult if not impossible for non-Tibetans to do one without the other for the Tibetan demand is on China. This complicates the issue further, for it frequently reflects a growing interest of governments. For the cynic and the realist, past experience suggests that it is only when state interests and government policy are involved that western criticism of China becomes more strident and sympathy for the Tibetan cause rises proportionately. If a graph were to be drawn of the international, particularly the western, interest in Tibet since the mid-1980's and even earlier it would sustain this view. The graph would also indicate the degree as well as the nature of western (read American) state interest in China. Any discussion therefore, on the right of the Tibetan people for self-determination tends to be unrealistic if it ignores the political dimension.

In the past ten years or so, the Tibetan cause has once again invited active response from the international community from the time that the 5 Point Peace Plan was proposed by the Dalai Lama in September 1987 and the demonstrations and riots that took place in Beijing and Lhasa in that same year. The initial concern was

* This written paper is based on the verbal presentation made at the Workshop held at Manesar, Haryana on 23 February 1996.

about human rights violations by China and was broadly similar to the concern that the international community had expressed in 1950-51 and again from 1959-1965. Since then in a qualitative and significant change, it has become a widely echoed demand that the Tibetan people be permitted to exercise their right to self-determination. In this decade since 1987, as also earlier, history and international law have been summoned to argue that Tibet for most of its history was a state separate from China with a distinct personality of its own; that in 1913 Tibet and Mongolia jointly declared an end to the traditional tributary relationship with the Manchu emperors after the Qing dynasty collapsed as did China's traditional system of governance that from then until 1951, when Tibet was 'invaded' and colonized by communist China, it performed most of the functions of an independent state. And, finally, that Tibet has since been and is still, a colony of China. It is this last historical right that the Tibetans now desire to recover, and it is its current status as colony that has to be ended by invoking the right of self determination. The right itself, the purposes for which it is being invoked and the context of the times, locate it squarely in the realm of politics. To deny the politics of the matter, is to ignore the heart of the matter particularly when China as the 'other', as the one against whose control the right is invoked, perceives and responds to the matter in political terms.

China views the demand for self-determination as having two dimensions. At one level, it grants that the Tibetans are deeply discontented, that they have been grievously injured by Beijing's policies even before and after the Cultural Revolution. In 1980 when the then Premier Hu Yaobang visited Tibet and realised the extent of suffering of the people, Beijing has re-examined its nationalities policies, expedited the economic development of Tibet and opened up a channel for communication with the Dalai Lama. At the other level is China's sensitivity to foreign interest in Tibet. At present China regards the wide international sympathy and support Tibet receives, as part of a political game played by those who want to pressure, weaken and break-up China. Beijing fears that its territorial integrity is threatened, its social unity is being undermined, and its domestic political and social organisation is being infected with the virus of 'democracy'. So China rebuts this reading of history and denies Tibet the right to independence.

China claims that Tibet has continuously been part of China except for brief interludes since the 13th century. It denies that it was independent between 1913-1951 and that it was not so recognised by any state, not even by Britain. Accordingly, it argues that Tibet was not invaded in 1950 but was peacefully 'liberated' from external manipulation as well as from its domestic feudal forces in 1951: China's response to the growing international call for acknowledgment of Tibetan independence in history and in international law, is to insist that Tibet is an inalienable and integral, though *autonomous*, part of China. Wherever it can, Beijing asks other government leaders to reiterate their agreement with this position in formal documents like joint communiqués.

Thus, as both sides continue to muster their arguments and their supporters, the political play is in danger of becoming a zero sum game, complete with winners and losers in which one side either wins all or loses all. Tibet is therefore independent or it is an integral part of China. A third alternative, whether the British innovation of 'autonomy' or Beijing's innovation of one country, two systems, does not exist. In other words the frontal confrontation leaves little or no scope for compromise or for a settlement to be negotiated between Tibet and China. This is manifested in two ways: one in the erosion of direct bilateral contacts between the Dalai Lama's entourage and the Chinese leaders. As long as these contacts were alive the positions taken by the two sides seemed to represent their maximum but negotiable positions. On the Tibetan side participation in bilateral talks supported the position attributed to the Dalai Lama that the real Tibetan demand was not for independence, that Tibet would negotiate for a large degree of autonomy that left certain matters like defence and foreign affairs to Beijing. On the Chinese side, the talks gave credence to Beijing's offer that everything short of independence could be discussed, that Tibet could be given wide powers of self governance. It is also manifested in the recent heightening of Chinese suspicions that the western support that the Tibetan demand commands, may become part of the China policy of governments, especially of the developed countries. Its dominant concern today, is to protect its territorial integrity, and ensure that its agenda for the return of Hong Kong, Macao and Taiwan to China be completed. This concern for ensuring security is given high priority over the adoption of soft measures in handling Tibetan discontent.

In Beijing's analysis, the prime mover and the key player in this game is the United States. Its China policy, as China's sees it, uses Tibet, the Dalai Lama and other issues on which the US has expressed concern such as Taiwan and human rights, to weaken, infiltrate and sabotage China's social and political fabric. It therefore does all it can to counter this multiple threat. However, China is realistic enough to acknowledge that these issues lend themselves to use as pressure points because there are genuine problems. Since the visit of deposed Premier Hu Yaobang to Tibet in 1980, China has attempted to heal the wounds of the Cultural Revolution years. It has restored monasteries, scaled down its military presence in the TAR, and invited the Dalai Lama to return, as part of Beijing's 5 Point Plan for Tibet. It has opened Tibet to tourists and visitors, as well to trade and commerce with the outside world. In 1994 the Third Work Conference on Tibet inaugurated an ambitious development plan for Tibet with all provinces of China committed to assisting its development of Tibet. This was accompanied however with a much more harsh attitude towards the Dalai Lama. He was described as a 'splittist' and as a willing tool of international forces hostile to China. Since then has grown the Chinese attitude has hardened further. Beijing has begun to tighten its control over the Tibetan Autonomous Region, (TAR), over its monasteries and its social institutions. Social order is restored and maintained using all means available. The use of force to disperse

the peaceful demonstrations of peaceful Buddhist monks testifies to the strong anti-China sentiment within the TAR, and to the loyalty the Dalai Lama can command even in exile. China is currently taking measures to weed out known Dalai supporters, close down monasteries loyal to him and to disallow even his photographs from public display. Publish statements of the Chinese leaders suggest that Buddhism and a pro-Dalai attitude have touched even the Tibetan cadres of the Tibetan communist party. Beijing sees a dangerous nexus growing between the monastery, the people and perhaps even the party in Tibet on the one hand, and the Dalai Lama, the Tibetans, in exile, Chinese dissidents and powerful foreign forces on the other. The Chinese now no longer regard the contradiction such as exist between the Dalai Lama and the Chinese, between those asking for self-determination and the Chinese government, between the Tibetans and the Han, as contradictions among the people. Such contradictions in Chinese political thought, leave ample scope for peaceful resolution if handled properly and in time. Instead Beijing now regards these differences as having become antagonistic contradictions between the enemy and the Chinese people, between anti-national elements and patriots. Again, in Chinese political thought, an antagonistic contradiction becomes inevitably an all out power struggle. At the present stage power lies with Beijing and will do so until foreign governments do not intervene directly or indirectly to weaken China or its will.

As long as the power relations between China and Tibet, and between China and the countries of the developed world in particular the US, remain unchanged neither historical and legal argument, nor moral and other forms of support can advance the Tibetan cause. And, as long as China continues to feel threatened by developments within Tibet and by what it calls the internationalisation of Tibet, it will use all means to keep control of Tibet. China will in all likelihood, continue to follow a harsh and coercive policy in the TAR. The modernisation of Tibetan society and the 'secularisation' of the monks, nuns and citizens of the TAR will continue its attempt being to erode the domestic support base of the Dalai Lama. The real sufferers in this tragic political stand off are, and will continue to be the Tibetan people residing within the TAR.

States everywhere try in every way to hold on to what they have, what they consider to be rightfully theirs or what they can equally rightfully claim. History is replete with such instances, and China is no different. Instead, it is because of its historical experience, because of its, as yet incomplete process of state formation, and its ambition to acquire the international status befitting its size and its civilization, that China reacts even more swiftly and harshly to developments concerning not only Tibet, but also Xinjiang, Taiwan and Hong Kong. In Chinese strategic thinking, the most effective measures when an undesirable process is under way are pre-emptive measures. Taken in time, China believes, they are the only way to ward off a possible eventuality becoming an inevitability. As mentioned above Beijing has made its determination to protect its sovereignty over Tibet and elsewhere

unambiguously clear to all concerned. Its strategy is also multi directional and multi dimensional. In addition to taking all steps to harden its territorial sovereignty, Beijing is also determined to acquire strength (military, economic and political) to ensure this as well as to deter foreign powers from obstructing the reunification of Hong Kong and Taiwan with the mainland. Essential to its strategy is its ability to play the China card namely, to make China so important in economic terms as market for trade and investment, that foreign economic and commercial interests will ensure that their governments follow non-provocative non-confrontational China policies.

The issue therefore is not whether the Tibetan people have or do not have a right to self-determination. This is an inalienable right for all peoples everywhere, and one that cannot be compromised. However, this right is inevitably invoked in a *political context*, for a *political* goal-self-determination, and it can be exercised only by *political* means whether violent or nonviolent. The right, in principle, having been granted, the issue is when, how and why the right is to be acted upon. The first question to be asked is what does self-determination mean in this instance, for the Tibetan people? Does it mean the right to sovereignty and to nationhood? Or does it mean a high measure of self government leaving essential functions like defence and foreign affair to Beijing? Or does it mean only the preservation of the Tibetan spiritual, religious and cultural identity, etc. Once this meaning of self-determination is decided the question of what appropriate strategy to adopt, arises. These are clearly political questions requiring political answers. These answers or strategies in turn, involve not only the Tibetan or other peoples, but also states and governments. It requires them to find a solution that resonate with the concerns and ideas of the era in which the problem is raised. To explain this it is necessary to look back on history and forward into a dimly perceived future.

Through most of this present century, the right to self-determination was asserted in a colonial context. In that context, it came to mean the right to national (political) independence and to statehood for the colonized people. The rise of nationalism effectively delegitimized the imperialist expansion of the previous century and legitimized these demands of the colonized. The colonized peoples had no earlier interaction with the imperialist power. They did not share its culture, nor was it a geographical neighbour or known to them in other ways. This was the essence of colonialism and of the opposition to it. Once the right of self-determination was invoked and acknowledged, the line between right and wrong was drawn and imperialism was put on the defensive, despite the power it commanded. The legitimacy of the demand for the withdrawal of the imperial power, was based on the right to self governance and the right to equality regardless of race or religion, that were recognized, in principle, even by the imperial powers. These rights, universally acknowledged for all peoples for all times were not only political rights. They were raised to the level of ethical and moral principles of the age that were later enshrined in the Charter of the United Nations. National movements, war, and

the rise of socialism, helped to alter the power equation between the coloniser and the colonized and enabled these principles to dominate the high moral ground in postwar international politics.

In that postwar era, decolonisation and self determination were thus inseparably paired. They legitimized the end of imperialism. Politically they also legitimized the recovery of all territory that the colonized could claim for itself by history, by cultural tradition and nationality, and also by international law. In 1950 the entry of Chinese troops into Chamdo, took place in this political context. It can be seen as an exercise of this right to sovereignty just as was the Indian military take over of Goa from Portuguese control, a long fourteen years after independence. Whether regarded in this light or as invasion, the Chinese move decisively ended the ambiguity of the China-Tibet political relationship bequeathed by British imperialism. It did so in keeping with the trend of the times and with the need of modern sovereign states for definite limits to the reach of sovereignty. It is instructive to remember that the Tibetan problem as it is today has not been replicated in the case of Mongolia whose sovereignty as political fact, was recognised by other states. It was also recognised by the Peoples Republic of China (PRC) regardless of a historical claim that it could have preferred, as did the KMT which, incidentally, also continues to claim Tibet as part of China.

With the collapse of socialism and the disintegration of the Soviet Union, a different political context has come to dominate the international system. For one, this is a post-colonial, post-national independence era. No colonised peoples or territory have yet to become independent.

For another, the break up of the Soviet Union into its constituent parts and the failure of socialism, have created a new situation worldwide in which a new definition of the concept and meaning of self determination has to be found. These are global changes that have returned the issue to the system level. Large scale collectives based on class unity as the socialists would have it, or which are multinational societies but unitary states, are no longer the universally acceptable norm. Instead, small collective based on a popular mandate, aspires to become the social and political norm. Democracy, western style, is offered as the only model for all societies everywhere. It is this development, namely the victory of the democratic model over the socialist model and its resilience, that Fukuyama termed 'the end of history.'

It is in keeping with this model that the right to self-determination has taken on new meaning specially after the assertion of ethnic national identities in the erstwhile Soviet Union and in Yugoslavia. Self-determination is now directed inwards, within existing states, and is invoked by smaller collectives against the national collective. Where the demand of sub-national identities is for independence, it threatens to break up those very states that came into being in this century, by invoking this very same right, and who are the only legitimate actors on the international stage.

This has happened in what was Yugoslavia and elsewhere. It has also happened earlier than the decade of the 1990s, for no new human situations are in absolute terms, new. The earlier examples that come to mind readily are those of Biafra which did not succeed, of Bangladesh which did, of Eritrea and so on. Nevertheless, despite its destabilising consequences, this right is in the process of being legitimised by reference to the higher moral principles of democracy and of individual human rights. As such, it affects all states, not only the young new states. To illustrate: quite recently, the leader of the agitating Basque people who straddle Spain and France, was arrested. A movement for Scottish independence has been around for a long time as has that of the Welsh. Altogether there are about 143 such movements in Europe alone. None of these has yet acquired the international standing of the Tibetan peoples despite a longer history. These numbers, which are increasing everyday, testify that we are living in the midst of great social and political change that encompasses the entire globe and the whole of mankind. The world is in urgent need of discovering a means and a formula that would enable this right to be exercised by sub-national groups without the chaos, the massacres, and the horrors that have been witnessed in Bosnia and Serbia. The need of the times therefore is for visionary statesmanship of an extraordinarily high moral even spiritual calibre, capable of guiding mankind towards a more humane future.

The right to self-determination for the Tibetan people belongs to this more challenging context. It cannot and must not be envisaged as belonging to the postwar process of decolonisation and political independence. To understand self-determination only as state sovereignty, to claim legitimacy from history or from principles of international law, does not meet the need of the times. Everywhere the challenges including the current Tibetan challenge if it may be so called, is to state sovereignty. But the arguments and principles invoked, are only Tibet specific: They do not add up to a perspective, method, or precedent that has universal relevance or even a precedent that could be replicate by groups and peoples elsewhere.

The Tibet case is a particularly active case today. It is also a case that is unique in many ways. Nevertheless it has at the same time a universal dimension in that it is the forerunner of many other cases of sub-national groups that might mount a challenge to the structures of existing states. India, a multi-ethnic country, faces such challenge in Kashmir and elsewhere. The need therefore is to look both at and beyond the issue of Tibet to the global problem which should be resolved; including that of ends and means, of truth and falsehood, of violence and nonviolence.

The Tibet case is unique because of Buddhism, the religious nature of the Tibetan people, and a long tradition of the non-secular organisation of society and government. Above all it is unique because it has the leadership of the Dalai Lama who stands as symbol for what the new age so urgently needs: an end to the divisions between nations, societies and peoples that have given rise to brutality, bloodshed, hatred, as well as a recovery of the spiritual without which human beings will not

live and act as humans or have a humane future. This is why the means and the process that the Tibetans choose for a resolution of their problems with China, will willy-nilly constitute an influential precedent. This requires that the present frontal confrontation between Tibet and China must not continue and there must be a stepping back from the brink. If that is not done, the tension between them will mount, leading to more violence and to the greater militarisation of the region. From the reactions and responses of governments so far, it must be evident that no government is willing or will be willing to confront China for the sake of Tibet, even by the seemingly simple gesture of recognizing the Government-in-Exile. It would be a great tragedy if Tibet and Tibetan aspirations are to be betrayed again as they were even before the PRC came into being, because of state interests, Tibetan weakness and its dependence on the policy decisions of foreign powers. Such a fate can be avoided only by a self-reliant people using non-conventional means for non-conventional purposes.

This brings us back to a reconsideration of the aborted negotiating process. In that forum, the Tibetans are always their own masters because of the power of being able to say no. In that forum they can deal directly with the Chinese authorities with confidence to uphold Tibetan interests with power and legitimacy being derived from the active support of the people. That process has today reached a dead end. It can perhaps be revived, but only if positions held are drastically revised with wisdom and statesmanship; and if alternatives to the demand for self-determination as sovereignty, are considered. The promises of autonomy continued in China's nationality policy include full citizenship rights equal to those of the Han. They also include freedom of religion. The full possibilities inherent in these promises have not, it seems, been fully explored for two necessary conditions are missing. One is the lack of trust in Chinese promises given the experience of the past. The other is the absence of an innovative struggle within the TAR for the promised civil rights on the Martin Luther King pattern, that borrowed heavily from Gandhian thought and practice. A satyagrahic movement that of the Tibetan people led by the Dalai Lama as the first *satyagrahi*, that avoids all hatred and violence, that suffers suffering but does not itself cause others to suffer could well be an alternative worth considering. The hope would be to bring about a profound inner change in the Tibet-China relationship. It may also in time, induce change within China—not on the model of liberal democracy but change that is more firmly committed to social and individual justice. A struggle along these lines is more likely to result in constructive cooperative and non-hostile interaction for the future, instead of the instability, hatred and violence for the region as well that appears at present to be inevitable. It would be the greatest tragedy if the Tibetan desire for self-determination results in violence and in a legacy of tension and suspicion between Tibet and China, or to confrontation between China and other states. If that tragedy were to transpire, Tibet would lose its uniqueness and the world, a rare historical opportunity.

In today's world all problems including that of a right to self-determination need to be resolved in a manner that will minimize if not end the violence, intolerance and suspicion that characterize the inter state system and its varied societies. Violence and hatred are not part of Buddhism and the message of the Dalai Lama is one of love, Brotherhood and the Middle Path. The Dalai holds a very special position and is ideally equipped to innovate both a new inner meaning of self-determination and new forms for its realisation. A movement led by him based on our civilisational and cultural values and those of Buddhism, could perhaps be the only way to bring about what Mahatma Gandhi called a spiritualisation of politics and lead to a nonviolent future.

8. OBSERVATIONS OF THE WORKSHOP ON SELF-DETERMINATION OF TIBETAN PEOPLE: LEGITIMACY OF TIBET'S CASE

October 26-27, 1994, Tiger Den, Seriska, Alwar (Rajasthan)

1. The Workshop discussed at length the following working papers of:-
 - (i) Prof. R.P. Dhokalia: *The Legitimacy Today of State Authority and of Collective Right of Self-determination.*
 - (ii) Shri. L. L. Mehrotra: *Tibet and the Right of Self-determination.*
 - (iii) Dr. B.C. Nirmal :
 - (a) *Tibet and the Right of Self-determination.*
 - (b) *Concept of the Right of Self-determination.*
2. There could not emerge any consensus on conclusions to be drawn at the end of the Workshop. It was however decided that, on the main issues raised, the comments in writing may be sent by the participants on the basis of which general conclusion may be formulated. The main issues raised were:
 - (i) The concept and the content of the Right of Self-determination under International Law: (a) External Self-determination, (b) Internal Self determination;
 - (ii) The legitimacy of Peoples Republic of China's authority over Tibetan territory and people;
 - (iii) Whether Tibetan People have a distinct identity of their own as a people to claim the Right of Self- determination;
 - (iv) The legitimacy of the Nature and the Right of Self-determination of Tibetan people and

- (v) Modalities of implementing the Right in question and the role which can be played by the World Community, the UNO, the third Parties and India in particular.
3. In view of the absence of any concluding comments, the following observations from the "ought" point of view are made irrespective of political and other constraints of the reality of the prevailing stalemate and whether or not these are acceptable to the parties concerned. These comments cover the main issues posed before the conference.

(1) THE CONCEPT OF THE RIGHT OF SELF-DETERMINATION UNDER INTERNATIONAL LAW:

The Right of Self-determination is a dynamic International Law concept which has evolved and got recognition only during the last few decades after the of World War II. Its three-pronged evolution has taken place in phases and has three distinct aspects:

- (a) National Self-determination as a right of independence, secession and liberation exists for all peoples under colonial rule or under any alien occupation and who have suffered or continue to suffer as victims of aggression and acquisition of territories by resort to force, which under UN Charter is patently illegal. The universal right of self-determination prohibits colonialism or forcible occupation of any territory and attributes to all such peoples the right freely to determine their political status and to pursue their economic, social and cultural development. National self-determination and the sovereignty of people are the two sides of a coin. The concept, that Government must be legitimized by the consent of the people, underlines the idea that a people entitled to create a state is a question of the will of the citizens concerned.
- (b) Self-determination as a right to internal self-rule and democratic governance is an entitlement of all peoples in general within existing States and particularly of those having distinct identity on the basis of culture, race or religion. In view of international obligation to comply with the criteria of democracy and the rule of law as a result of the accelerated changing demands of contemporary civilization, this right prohibits arbitrary exercise of any authority and postulates a participatory electoral process, greater internal self rule and autonomy for legal protection and preservation of their identity and cultural heritage so that

the people concerned are not alienated from national stream and are not faced with the stark choice of either remaining in a condition of total oppressive subservience within a centralized bureaucratic State, or taking unavoidable eventual steps of revolution against the *status quo* or secession to form their own State within a defined territory. Functional pluralist democracy alone provides a socio-psychological basis to eliminate contradiction between the right of self-determination of alienated people within existing states and the right of these states to protect their own territorial and political integrity and national solidarity recognized by the UN Charter. Internal aspect of self-determination of peoples in multi-cultural States means more democracy 'and more autonomy and self-rule for self preservation, self development and protection of cultural identity of people. A true democracy comes from the grass roots not from the top down which alone establishes the popular will. Internal self-determination of people is more in reference to the factual conditions of State authority's response to the aspirations and participation of all peoples in the life of state than a legal standard to be implemented.

- (c) The right of self-determination for all peoples wherever they are, as individuals and as a group or collectivity, is a prerequisite of and a precondition to the actual exercise of all other enumerated human rights and freedoms which are the birth right of all human beings. This right subsumes all human rights. It prohibits any kind of discrimination, oppression, exploitation and arbitrary exercise of power and obligates all kinds of authorities to respect, without any discrimination and on the basis of equality, human dignity of the individual.

The normative entitlement of a people to the right of self-determination of their political status, to democratic governance based on anticipatory electoral process, and to the recognition and protection of human rights and freedoms thus constitutes the basic feature of contemporary global legal order as well as a normative expectation of the community of States. The concept of "a people" is not defined by international law but it is historically developed consciousness of ethnic separation and compactness of a people and their sense of belonging together and distinguishing between members of a polity as 'outsiders' and 'insiders'.

(III) THE LEGITIMACY OF THE CHINESE AUTHORITY OVER TIBETAN PEOPLE:

The right of self-determination of a people in a polity is inseparably linked to the legitimacy of the State. State authority must represent the entire population and not

merely segments of it. If it represents the institutionalized rule of certain dominant ethnic groups over others, who by definition would be excluded from participation in political life, and if a state resorts to legally institutionalized and factual discrimination against ethnic groups, it would lose claim to the loyalty of its citizens and suffers from a deficit of legitimacy of authority. In the event of the relationship of such a State authority to the alienated group only through a repressive apparatus, the right of internal self-determination is transformed into an external right of self-determination and it can be implemented only by way of secession.

The legitimacy of a State authority and government over a people inhabiting a well defined territory depends upon not only domestic endorsement and the capacity of the system to engender and maintain belief that the existing political legal institutions are the most appropriate for the people concerned who fulfil their aspirations, needs and demands, but also the international endorsement of the system in accordance with the criteria and expectations of the global community of nations.

The right of the people to democratic governance, free and fair participatory electoral process, respect for the rule of law, guarantee of a broad panoply of democratic rights and fundamental freedoms, politicians' strict respect of norms laid down by a constitution and the legislature, and accountability of government to the people, provide the requisite validity and legitimacy to a State authority *vis-à-vis* a people. In the context of the above criteria, the Chinese authority over Tibet lacks legitimacy for the following reasons:-

- (i) Chinese authority over Tibetan territory and people emanates from the former's aggression, illegal forcible occupation, impermissible acquisition and military control of Tibet in violation of the UN charter.
- (ii) Continuous Chinese military occupation and control of Tibetan territory and people has no moral, political, historical and legal justification.
- (iii) The traditional Tibetan territory has been illegally and purportedly merged in neighbouring provinces of China and the map of Tibet has been redrawn by the Peoples Republic of China in violation of the rules of international law. Similarly, significant settlement of non-Tibetans in Tibetan territory pose a serious threat to the exercise of the Tibetan right of Self-determination. Tibetan people and territory have had all along the history their own distinct identity and separate existence and have never been integral part of Chinese territory and people as a nation. Spiritually and culturally, Tibet has had affinity with Hindu family of nations; religiously it belongs to Buddhist South-East Asian community of peoples; ethnically,

Tibetan people constitute a distinct branch of *Homo Sapiens*; and geographically, Tibet has had separate discrete and single discrete identity of its own. Besides, pre-modern feudal relationships neither form the basis of a claim to sovereignty in the modern sense in order to exclude self-determination of a population and territory concerned nor do they justify the re-occupation of such territories by force. The Peoples Republic of China has no right of territorial integrity with respect to Tibet as it was historically and legally an independent State when it was invaded by the Peoples Republic of China. The International Court of Justice has held in the Western Sahara Advisory Opinion (1975) that historically based titles are fundamentally subordinate to the right of self-determination of people and the Stimson Doctrine too excludes any recognition of territorial title in cases of forcible annexation.

(III) LEGITIMACY OF THE COLLECTIVE HUMAN RIGHT OF SELF-DETERMINATION OF TIBETAN PEOPLE:

The Tibetan people, inhabiting a well-defined territory since times immemorial, are confronted ever since illegal invasion and occupation by Peoples Republic of China with four core situations which justify their legitimate claim to independence and liberation from oppressive alien rule:-

1. They have been the victims of Chinese military invasion, territorial aggression, and occupation of their home State.
2. They have been subjected to blatant violation and abuse of human rights as a result of calculated genocide and demographic aggression. It is inconceivable for Tibetan people to obtain human rights in a full sense without the primary human right of self-determination that is implicit in having political independence and freedom from an alien source of authority.
3. They are confronted with prospects of demise and pervasive destruction of their cultural heritage and identity as a result of well calculated, deliberate and sustained Chinese policy of systematic discrimination and genocide, arbitrary arrest and detention, extra-judicial execution and torture, environmental degradation, political and demographic oppression economic exploitation and cultural annihilation reducing them to a *de facto* status of colonial people. The Peoples Republic of China has through such acts made itself illegitimate as the government over the Tibetan and their historical territory.

4. Tibetan people find that all doors of peaceful political solution have been totally closed by Chinese authorities as a result of arbitrary rejection of legitimate right of self-determination. Yet, Tibetan approach to their struggle remains of unique character. It is of moral persuasion, is nonviolent and peaceful, and launched primarily under the spiritual leadership of His Holiness the Dalai Lama. In view of the above conditions Tibetan people have an extremely strong argument for unconditional self-determination, as the question of self-determination of Tibetan people is indeed the question of their very survival and self preservation. The claim of the Peoples Republic of China regarding its territorial integrity and sovereignty over the Tibetan people and their territory and as to the prohibition of intervention merely provides an excuse to protect gains made by illegal occupation. The Tibetan people are in effect a captive nation and so have a genuine case of external self-determination and restoration of their own statehood of which they have been illegally deprived. The Tibetan people are entitled to exercise their right of self-determination regardless of Tibet's historical status as the Peoples Republic of China has made itself illegitimate by its deeds. The Tibetan question is not of internal self-determination which in a democratically constituted State is more a reference to the factual condition for legitimate rule than a direct legal standard to be implemented.

(IV) NATURE AND SCOPE OF THE RIGHT OF SELF-DETERMINATION OF TIBETAN PEOPLE:

The right of self-determination, being an elementary regulatory principle in modern international law and classified as *jus cogens*, can hardly continue to be unconditionally subordinated, to the international power politics. However, unfortunately, the legitimate right of self-determination of Tibetan people has been pushed to the side and relegated into the background by primarily politically-motivated interests. For a community of States, the members of which regard it as essential to promote, secure and strengthen human rights and democracy, and who emphasize the linkage of democratic government to the will of the people, there should scarcely be any dispute about the justification of national self-determination and of the sovereignty of a people who have been victims of alien military aggression and occupation of their land and perpetuation of oppressive rule. The so-called autonomy of Tibetan region under Chinese authority or any compromise formula of 'Internal Self-determination' has in fact become straight forward foreign control and unconditional subjugation of Tibet and has proved to be proverbial Trojan horse for the Tibetan people. The legally institutionalized as well as factual discrimination

against Tibetan people has led to a deficit of legitimacy of Chinese authority as the relationship of this State authority with Tibetan people is of a violent and repressive apparatus entailing the use of naked terror and massive violation of human rights as well as genocide. On the other hand, under the spiritually enlightened leadership of the Dalai Lama, Tibetan people have launched only a most peaceful and nonviolent struggle for their liberation and self-determination and have resorted to only recognized peaceful and diplomatic methods of settlement of their legitimate demands of restoration of a free and sovereign statehood of Tibet.

A community, which recognises human rights and democracy as elementary foundations of its regulatory structure, (as demonstrated in case of Haiti) can hardly afford to be ineffective, or delay its action until a violent resolution of the conflict about self-determination of a people who are suffering as a victim of patent aggression, forcible occupation of the territory, and genocide. Inactivity or failure on the part of the UN to intervene in Tibet involves the relinquishment of the new regulatory model which articulates the interests of the global community in the form of the principles of the rule of law, democracy and human rights. Indeed, normal cases in the emerging structure require internal self-determination of national and ethnic groups within existing States. However, in exceptional cases like Tibet, in which a people are victims of aggression, acquisition of their territory, genocide, transfer of population and violation of human rights, and perpetuation of suppression by use of force by dictatorial regimes, — the claim of external self-determination and independence is fully justified with a view to helping in implementation of the genuine aspirations and legitimate rights of the people.

(V) MODALITIES:

As regards modalities of implementation of this right of the Tibetan people following course may be adopted:-

- i) UN General Assembly may pass a resolution renewing its call for immediate restoration of human rights of the Tibetan people and for the implementation of their right of self-determination as called in Res. 1723 and 2079.
- ii) The so-called Autonomy of Tibetan people does not fulfil the aspirations of the Tibetan people who are entitled to more democracy and complete freedom from alien oppressive rule.

- iii) The Member States of UN should extend their moral and material support for the realisation of the rights of Tibetan people in particular of their self-determination.
- iv) The Peoples Republic of China should be persuaded by the UNO to enter into meaningful negotiations with H.H. The Dalai Lama on his proposal of free association of Tibet to China, and the member States of UNO 8 should create a powerful public opinion in favour of eventual independence of Tibet as a sovereign State.
- v) Meanwhile Tibet should be declared by the UNO as non-self-governing and occupied territory under the terms of UN Declaration (1960) on the Granting of Independence to the Colonial People and the mandate should be given to the Special Committee on Decolonisation for a regular review of the situation of Tibet.
- vi) The UN General Assembly should be persuaded to pass a resolution expanding the mandate of the Special Committee on Decolonisation to include Tibet within its jurisdiction and to regularly review the situation of Tibetan people as distinct people within existing States.
- vii) The UN Commission on Human Rights should appoint a special Rapporteur on Tibet as a matter of urgent priority under Res. 1991/10 of Sub-Commission on Prevention of Discrimination and Protection of Minorities.
- viii) The IBDRD and other international and bilateral financial institutions should not finance projects supporting population transfers of peoples.
- ix) The UN Development Commission should consider the problem of Sustainable deforestation having regard to evidence of the special problem of deforestation in Tibet.
- x) The International Commission of Jurists be requested to appoint a new high level committee comprising independent experts to conduct a probe in respect of allegations of genocide, violation of human rights and transfer of population.
- xi) The Peoples Republic of China be requested to extend an invitation to the International Committee of the Red Cross for the purpose of inspecting places in which Tibetan persons are held under detention.

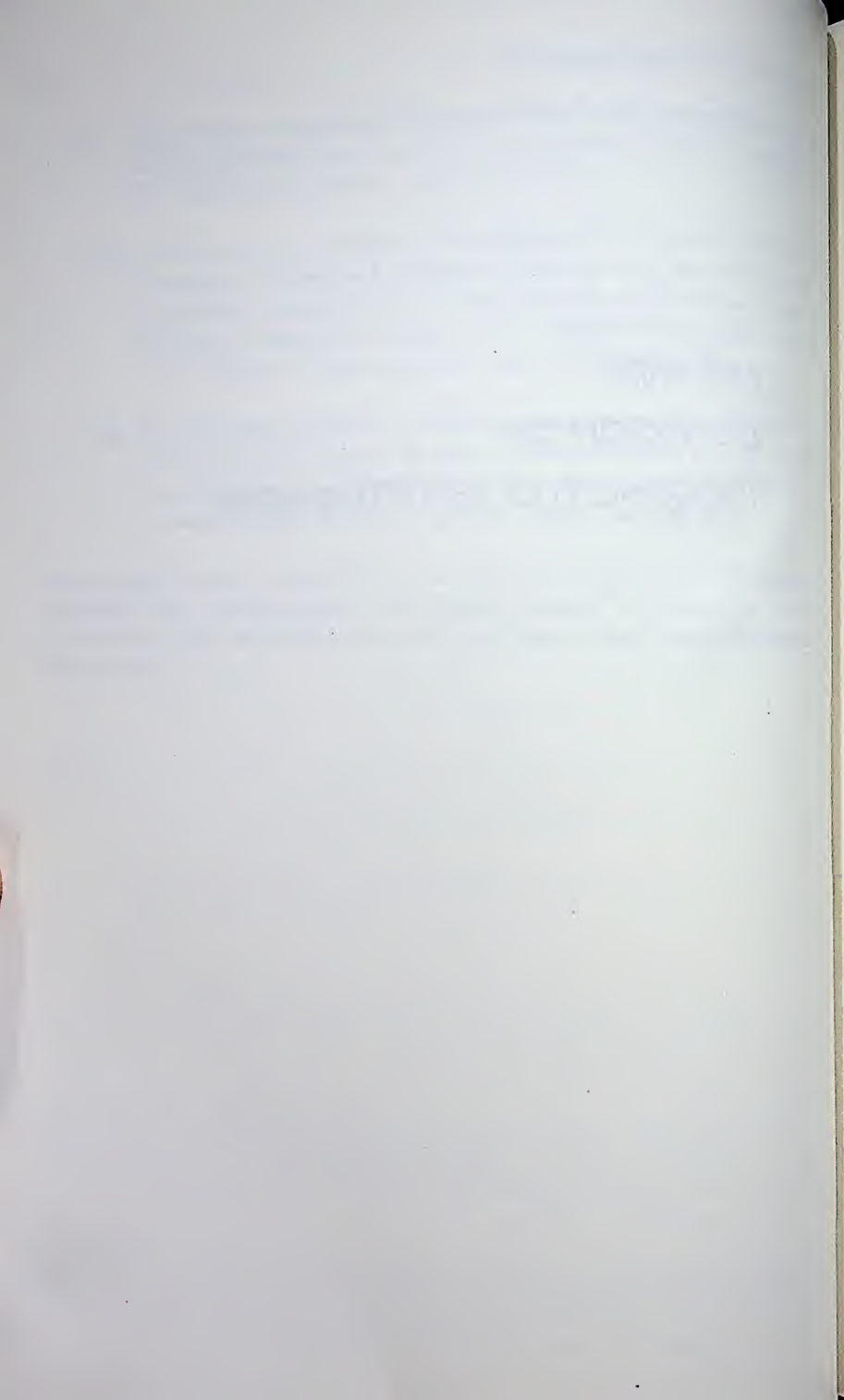
- xii) Governments in their bilateral relations with the Peoples Republic of China and in multi lateral fora, should take up the question of Tibet, in particular the Tibetan people's right to self-determination.
- xiii) With a view to ascertaining the wishes of the Tibetan people the possibility of internationally supervised plebiscite may be explored and pursued and cooperation of the Peoples Republic of China be sought to enter into a meaningful dialogue with the Tibetan Government in Exile on the question of Tibetan people's right to self-determination.
- xiv) An international conference on Tibet may be convened in 1995-1996 by the UN on the question of Tibet to evolve a solution and to explore the possibility of guaranteeing to Tibet under the Dalai Lama an international status similar to the Vatican State (The Holy Sea).

These conclusions and recommendations be brought to the attention of: The Secretary General of UNO, the Government of the Peoples Republic of China, the Tibetan Government in Exile, all members of the UNO and relevant inter/Non governmental Organisation.

PART THREE

DISCUSSION ON

THE CONCEPT OF SELF-DETERMINATION



THE CONCEPT OF SELF DETERMINATION

ALL ASHRAF: I would like to offer my congratulations to Prof. Rinpoche's presentation¹ for the wise words, the dignity and the nobility of sentiments with which we have been invited to discuss the whole issue objectively and impartially.

The loss of freedom of Tibet since 1959, has been the loss for the entire world and the freedom of the world has been diminished to the extent that Tibet has ceased to be autonomous. Tibet has not harmed anyone. Tibet still continues to be the custodian of the traditional values which Prof. Rinpoche talked about, the ancient tradition of India where we have always emphasised duty, as Gandhiji said, there is only one right and that is the right to perform one's duties. In the spirit of that tradition there was no need to talk of self-determination but the fact is that there has been a major blow to this tradition since 1959 so far as Tibet is concerned.

Amidst all the plague and virulence India continues to inspire confidence and hope because of the ancient legacy of its commitment to moral values of freedom. India has championed the cause of freedom. There are occasions when we might have shown weakness but so far as the people of India are concerned, on the basis of my experience I can say, there is a tremendous support for the cause of freedom around the world and Tibet. Along the centuries a common tradition and faith in Buddhism which arose in India spread to Tibet and into Central Asia. All these things enjoin upon us to undertake an analysis to ensure continuity of freedom in the world. The saying is that 'it should begin at home or in the neighbourhood.' In that respect we have assembled here and we thank Prof. Rinpoche for giving us the opportunity to discuss a major issue without anticipating the outcome of the discussion. I think it is a major issue of contemporary international situation.

R.P. DHOKALIA:² It has been my privilege to have been associated with The Tibetan Parliamentary and Policy Research Centre since its inception and in connection with the theme of this Workshop. Usually the seminars involve themselves in mere

¹ See *ante*, p. 3

² Prof Dhokalia's presentations made at the two workshops have been merged.

academic exercise. There have been numerous conferences, seminars on the status of Tibet, whether or not it was a sovereign State before Chinese occupation, whether or not it is entitled to be independent now, whether or not Tibetans constitute a nation, and whether or not Chinese political and military occupation of Tibetan territory has any legitimacy. These questions have been discussed *ad nauseam* at a number of fora but we thought that the basic issue today remains to be resolved in the context of human rights, an agenda which western countries have put as a priority. From this perspective how the Tibetan peoples' plight, which they are going through for several decades, could be highlighted at the present seminar and how this question can be approached with the emphasis on legitimacy of the Chinese control of Tibet and the latter's entitlement to self-determination.

Legitimacy can be legal, moral or political. Legally there may be justification of one's claim but morally and politically it may not. Besides, unfortunately, the international community has not yet evolved a foolproof system in which politics can be subordinated to law. It still remains a primitive system where law is subordinated to politics. This fact seems evident in the case of Tibet.

At the national level, we know that legislature, executive and judiciary each has to play its role. If constitution or law is violated you can go to the court. Howsoever high one may be, court can take cognisance of offences committed by anyone and give punishment, and executive will implement it. So the three branches — the executive, the legislature and the judiciary, are very highly developed and functional at the national level. However, these are not well developed and functional at international level. When the question comes up of the modalities of implementation of law on the question of Tibet the problem remains as to how Tibet could go to the world court when it is not recognised as a State? It is helpless. Only States, and with the consent, of the parties to the dispute can a matter be brought to the court. There is no executive which can implement the decisions of the International Court of Justice in case Tibet's case is legitimate and therefore, this has to be understood as there is no executive in international society. The United Nations Secretary-General or the United Nations General Assembly can only appeal to the State. The United Nations General Assembly has passed numerous resolutions on Tibet. Various Parliaments of States have also passed resolutions on Tibet. The basic fact remains that China is a mighty power and so intellectual community is silent on the Tibetan issue. In India, the *Hawala scam* is notorious, the highest and mighty have been brought to the court and they are now dependants. The world court on the other hand is not in such a position to be moved to drag PRC to its jurisdiction.

Even if there is a legal justification in favour of Tibet effective way is not available. Another perspective is political, where diplomats can play their role. Here the only powerful force is world public opinion. The resolutions passed at various fora have a great role in building world public opinion. That is how attempts are made at various fora by various organisations to strengthen the world public opinion for Tibet.

Third is moral justification, ethical point of view. We are at the period of human history where dramatic and unprecedented revolutionary changes are taking place and various modes of social control of group behaviour are in disarray. Religion, morality, ethics, customs are thrown to the wind even at the national level. Law alone seems to be the only custodian and law is violated with impunity. Loopholes are found in law to get out of the clutches of law. Today the solutions of all conflicts are sought through law whereas in traditional societies — religions, customs, and traditions played a major role and law had a limited role. Today the entire emphasis is on law whilst law is not self-operative. It operates through human agency. If human agency is morally, ethically strong and of high integrity then only law operates effectively. If our judges of the Supreme Court and our lawyers are of high integrity, only then law will be effective. If they can be manipulated and purchased, then the legal machinery becomes perverted and all hopes are dashed to the ground.

Apart from legal, moral, diplomatic perspective on the issue there is a perspective of pragmatism. The diplomats play a great role. How pragmatically China can be persuaded and approached in diplomatic way, how it can be persuaded to protect the rights of Tibetan people or to abide by law. These questions have to be taken into consideration at the three sessions. However the emphasis should be legitimacy of the claim of PRC and of Tibetan people.

The first session here will be on "The Status of Tibet under International Law." Much debate has been held on this issue from historical perspective. All kinds of evidences has been presented. Yet it has remained unsolved whether or not Tibet was sovereign at the time of Chinese aggression. Today under the Charter and international law, the existing states adhere most rigidly to territorial integrity of States and maintain that any part of territory or people which are within their domain are entirely within the nature of domestic jurisdiction and then sovereignty is unquestionable. For the existing states the right of self-determination is a red rag. We have problem in Kashmir, on that count we have problem in Assam. India is a pluralist and democratic country. There has taken place a revolution of rising aspirations in India. People who historically and culturally and for ages had remained in a subordinate status in one way or other, and as a result had lost their identities, are today asserting themselves and claiming self-determination on linguistic, ethical and religious basis.

It is very important at the outset that there is conceptual clarity about self-determination. We discussed at Seriska four papers. First paper dealt with the concept because if conceptual clarity was there then self-determination issue can be discussed with a clear mind. Self-determination has two aspects, external and internal.

External self-determination means that if the people or territory has been under foreign occupation it has a right to liberate itself. Modern international law is anti-colonial. After the World War II the concept of the right to self-determination has

been transformed from a moral right to a legal right and it had its beginning in anti-colonialism. After the War, a large number of countries became independent and new nations asserted that colonialism is illegal and colonies had a right to independence. Colonial situation exists wherever there is political oppression or economic exploitation by alien rule. The right of self-determination is accepted under modern International law in order to liberate territories and people from imperial yoke.

Internal self-determination on the other hand implies self-rule, self-government and self-development. United Nations Charter lays emphasis that political independence and integrity of State, and its sovereignty is a paramount principle. For the existing States, self-determination has now become a hornet's nest, a Pandora's box because excessive abuse and misuse of self-determination has led new nation-states to be beware of self-determination as it may lead to their disintegration. They have rejected self-determination of people within their territory if they seek secession from it.

Many states particularly in Africa, are not nation-states because artificial boundaries were drawn, by alien rulers others have been knit together artificially by ideology. In Eastern Europe, we find there has been disintegration of nation-states. Even older states are facing a crisis. Many Scottish people maintain that they are still a colony England and there is a movement for self-determination in Scotland. The pluralist country, like India, which is multilingual, multi-religious despite a sound working democratic constitution, faces a crisis. Whenever Central Government in India is weak there are chances of fragmentation because self-determination movements are engineered from outside on religious and ideological basis which determines their attitudes.

So India's attitude towards Tibet has been very cautious. It knows that China is a mighty power in the North. Whatever was possible it did it by welcoming Dalai Lama and providing shelter to Tibetans but has not boldly and aggressively declared Tibet as a sovereign State or that it deserves to be freed. Great Powers too have not dared to take any action because of their political economic and other interests.

Colonies have a right to independence. The emerging of Bangladesh was a norm-determining case where a minority rule of West Pakistan was oppressed and economically exploited of East Bengal. India, however intervened not in the name of self-determination. It never spoke of the right of self-determination at that point of time. The people of Bangladesh faced a war, and they resorted to violence and became independent with India's help. Tibet's case is a unique case of a people who have peacefully and patiently asked for freedom of their country in a nonviolent way and under the moral leadership of the Dalai Lama, their spiritual as well as temporal head.

Attempt may be made in this workshop to suggest some modalities. How? For instance, China maintains that Tibet is autonomous. What is the scope of autonomy? What is the content of this autonomy? Does this autonomy guarantee the security to

the identity of Tibetan people as part of their traditional culture? Does it provide full protection to the human rights? Does it have self-government? Does it have opportunities of self-development? In India, we have provided for autonomous regions and agreed to various demands of people. To what extent this experiment tried by India has been functional or successful or not however is another question.

If a territory and its people are financially entirely dependent on a State government, that autonomy has no meaning. Autonomous region should be financially independent. There is difference between deconcentration and decentralisation.

If China is prepared to accept the offer of the Dalai Lama, the experiment of autonomy should be given functional concrete shape. This workshop can suggest what should be the ideal content of this autonomy which will satisfy the aspirations of the Tibetan people.

In Europe Pope was given a special status and the Vatican State today is an international person. By a treaty Pope has been so recognised. The Vatican State has neither a proper defined territory nor exact population to be called a State, and yet the Vatican State has enjoyed an international status. Why should not the Dalai Lama and his people within Tibet, and living outside Tibet who may return or may not return, be given a special status by a treaty similar to that of the Vatican State where Pope is recognised as the head of the State. After all Dalai Lama is a spiritual leader of Buddhists whose followers are spread worldwide? Tibetans are spread in different parts of the world.

I hope that our deliberations are really effective and fruitful and we are able to formulate some worthwhile recommendations to appropriate body so that world opinion could be built on the basis of our recommendations.

Prof. Rinpoche has set the tone of the discussion. What was in my mind before I ventured to circulate my paper was that it should not be too technical, full of legal jargons, but should present the subject with a generalist approach with a view to clarifying the conceptual confusion which prevails with regard to this whole question of self-determination. In clearing the concept of self-determination we will also determine the content and the scope of the right of self-determination which has had an expanding dimension throughout the last five decades as a postwar development.

There was no concept of the right of self-determination before the Second World War in the sense it has developed and is recognised today in international law. Long back, American Revolution took place, and its slogan was "no Government without representation". This was followed in Europe by the French Revolution which highlighted various rights like liberty, equality and fraternity but made no mention of the right of self-determination. This was because the European International law justified and legitimised colonial occupation. War was legal. Empires were built by the use of force, aggression and occupation of territories and these were legitimate. Nobody questioned them. Empires were built by occupation by force which were internationally justified and legitimised.

We are examining here the legitimacy of the right to self-determination today in modern global society, and how it has undergone transformation through evolution after the World War II when colonialism came under attack. New concepts evolved and these concepts were eventually embodied in modern law of nation. Law is derivative of politics and morality, law does not exist in a vacuum. I should attempt to present this view in order to clarify the modern concept of the right of self-determination.

The concept of self-determination as a whole has had a contradictory impact in application of the principle. On the one hand, it has been emancipatory, in the sense that it brought about decolonisation and emergence of a large number of nation-states after the World War II, on the other hand, it has played a negative role. The sub-nationalism which is the excessive claim of self-determination has posed a great danger to the existing pluralist States. New nations which as a result of self-determination have acquired sovereignty and became the members of the United Nations, find themselves most opposed to the right to self-determination of sub-national groups. For instance, in Africa, most states are artificial creations, their boundaries are artificial. The tribal loyalties are more strong than national identity. If self-determination is allowed African states will disintegrate as tribes run across boundaries. The whole African continent will be in turmoil if tribal loyalties assert to exercise the right of self-determination.

Self-determination is not a static concept. I want to highlight the negative role which self-determination has played today in particular context of ethnic, tribal, religious conflicts resulting in a dilemma for heterogeneous states. It has become, for example, a vehicle of ultranationalism, ethnic strives and internal wars. Today the United Nations is not confronted with any major international war but with internal conflicts in different parts of the globe. Disintegration of the former USSR, Eastern Europe, and turmoil in Africa pose a serious problem. We find that existing states are confronted with internal wars, conflicts and consequent fragmentation. What will be the situation if the existing nation-states were to disintegrate and 1000 or 2000 States emerge? There are contradictory developments. On one hand there is globalisation and regional integration of states resulting in integration of States in Western Europe and other parts of the world, on the other many States face disintegration.

To my mind nationalism has outlived its utility. There is increasing erosion of sovereignty. We are living in a time of accelerated change, similar to what happened in the 16th century when empires disintegrated and nation-states emerged. Nations became an entity with sovereignty, feudalism ended and new economic forces emerged. Similar situation exists today. Global economic forces today are so powerful that national boundaries have become cumbersome and result is that new economic and political entities are emerging like the European Community, Commonwealth of Independent States, Organisation of American States, African Union and

multinational corporations with the larger economic interests. Transitional forces and global economic forces are rendering the concept of nation state dysfunctional.

On the other hand, independent states which are federal or even unitary states like England where Scottish people want independence, are confronted with assertion of sub-nationalism. In 1954 when I attended Edinburgh Conference, a Scottish Professor of International Law who was chairman discussing the subject of Continental Shelf and related law of sea matters, remarked "you Indians are fortunate that you became independent of the British, we Scots are still slaves, the oil of our Continental shelf is being exploited by the English to their advantage".

The task of self-determination is explosive because it is creating ultranationalism and posing danger to the existing states especially where international interstate system is highly protective. In this context the danger is disruption of national security, disruption of regional security system and, therefore, there is opposition to any self-determination demand. The new thinking is growing whether this self-determination is to play an emancipatory role or it is to play a disruptive role. If it is to play an emancipatory role then it should solve problems rather than create problems. Solving problems in the sense that it should play a potential role in bringing about harmony in heterogeneous states. The concept of autonomy, has developed distinction between internal and external self-determination, is being attempted within the State that has a democratic setup, a federal system, with steps being taken for the provision of democratic pluralism so that ethnic identity, identity of minorities, their cultural and political identity, is preserved. If states have constitutional provisions, or internal mechanisms of solving internal disputes then self-determination there may not necessarily mean cessation, but ways and means for functional and effective autonomy, more democracy, may be provided so that legal provisions of autonomy do not remain only on paper.

India is a federation. In law there is autonomy of *panchayats*, municipalities, constituent states, and even autonomy of the Universities. But in actual functioning there is no autonomy. All Universities have autonomy. This autonomy is indeed restricted to mere internal administration and curriculum. They have no finance except government grant, they are entirely dependent on Government. University Grant Commission does give the universities finances which again is dependent on the government. Where is autonomy? Executive Council members and the vice-chancellor are appointed by the administration in a way to control these institutions and therefore the so-called autonomy is nullified. *Panchayats*, municipalities are in fact governed by administrators and along with corporations are very often superseded. Where is local self government? Without financial autonomy where is the autonomy? This state of affairs has embittered Centre-State relations in India.

Functional autonomy is of great importance and ways and means have to be found to make autonomy in a state functional so that minorities and other deprived groups have mental satisfaction and they accept the system. This is legitimacy.

legitimacy does not mean that you are governed by articles of statutes. Legitimacy is the consent of the people, who accept the system and extend their full support to the government.

There are three stages in the evolution of the concept of self-determination in International Law.

First stage was the period of decolonisation, when colonies became independent in the fifties and sixties. There was some belief subsequently that self-determination principle had exhausted itself. Members of the United Nations who were strong supporters of the self-determination principle got convinced that the principle had exhausted with the end of colonialism. Wherever there were colonies the self-determination principle was acceptable, but with the emergence of independent nation states, self-determination had exhausted itself and had no application. This is what many members of the United Nations believed. But later the situation changed.

Second stage came with the adoption of Universal Declaration of Human Rights and other Covenants. Human Rights became so infectious that they brought about a revolution of rising aspirations of people. Not only at the national level but also globally the aspirations of the oppressive masses arose and a movement started for the assertion of people's rights. A swing of pendulum took place towards extreme assertion of rights with the creation of a highly acquisitive society. There can be no end to demands which keep on multiplying and are insatiable.

In democracies which have stratified societies, with feudal structure conflicts have got aggravated as people have become assertive. India has castes and a stratified social system. What plague we are having in this country as a result of aggressive assertion of rights is a phenomenon which is also manifested at the international level where poorer countries are posed against the richer countries. There is a demand that United Nations Charter should be modified to promote social and economic justice. In human right movement first there was emphasis only on civil and political individual rights; and then on social, economic and cultural rights. In our Constitution we had put the latter in the background, as one could not approach the court to pursue the directive principles as distinguished from fundamental rights.

Lately, the emphasis has shifted to collective human rights. The right to self-determination is a collective human right. As a collective human right it became the right of the people. The other rights of individuals have indeed no meaning unless there is a self-rule or self-determination of the people. In fact human rights civil, political, economic social, cultural rights have no meaning without self-determination. Self-determination can be through independence, full autonomy or self-rule of a people so that human rights are secure.

The third phase is now evolving after the collapse of the institutionalised Marxism. There is an international recognition of democratic enterprise. Only those states are considered civilised which have a democratic setup. We have seen what has

happened in Haiti. An ousted elected prime minister was brought in and army dictator was removed. That action was being taken by the USA on behalf of the United Nations. This had suited the USA which has at other places supported authoritarian regimes. India would not have intervened earlier in the same situation in Bangladesh if its own interests were not affected. But self-determination in the new form, as it is emerging now in United Nations discussions, means that in existing states people are entitled to more autonomy and democracy and the legitimacy of the state authority is based on the consent of the people.

It is in this context that we have to see this question of Tibet.

- (a) Does the Chinese authority in Tibet have any legitimacy from historical, political, legal or moral point of view and has Tibet been reduced to a mere colony?
- (b) Whether the claim of self-determination of Tibetans has any legitimacy from historical political and moral point of view?

Tibet has been reduced to a colony, under an exploitative and oppressive Chinese rule, if there is pervasive genocide, if there is demographic aggression, then does self-determination of Tibetan people mean independence as the only alternative, or alternatively mere autonomy is enough within the existing situation of Chinese full control of their territory?

If Tibet remains a part of the existing Chinese State, then what should be the content of its autonomy? By mere autonomy can we solve the Tibetan problem? If existing autonomy is a sham, then what is the way out? The Soviet Constitution theoretically did provide for secession of its constituent states because the bond of the Communism was a very strong cementing factor to hold the Soviet Union together. No other country provided for secession of a people or territories forming its constituent unit.

There are three situations.

1. As far as colonies are concerned modern international law recognises very clearly that they have a right to liberate themselves and become free. The situation justifies international intervention, and this intervention could be by the collective intervention of the United Nations.
2. Large-scale violation of human right, genocide, demographic aggression, provide another ground for intervention by collective action of the world community.
3. Democratic system is an operating principle and a global entitlement of a people. It is an international obligation. Democratic entitlement is an obligation of a state authority to ensure. There is an internal aspect of self-determination and an external aspect of self-determination. External aspect is recognition of a polity by others. Internal aspect is political recognition by the people concerned of the state authority to give its legitimacy by giving support to the system.

B. C. NIRMAL: What is the meaning of the concept of self-determination? Prof. Dhokalia has rightly pointed out that the right to self-determination in its original version means freedom from colonial hold. But right to self-determination is not a static but a dynamic concept which has expanded and evolved in the course of its history in response to the changing needs of the society. During the course of its evolution it has manifested itself in various forms. It is very important because there are seven to eight types of self-determination claims.

First, is freedom from colonial rule. There is no controversy about it.

Second, the right to dissolve a state and form new states, as had happened in the case of former Soviet Union & Czechoslovakia.

Third, is right to unification of states as in the case of Germany.

Fourth, right to autonomy, self-government and self-management as in the case of indigenous people.

Lastly, right to internal self-determination, right to a democratic form of government, right to choose the form of government. This internal aspect of self-determination is very important in modern times and this aspect has already been recognised in a number of General Assembly resolutions. For example in Kampuchea and Haiti.

Regarding secession there are two important documents: Friendly Relations Declaration (1970), and the Vienna Convention on Human Rights (1993). Both these documents hold out the possibility of remedial secession. On the basis of these documents a very distinguished American jurist had said that there are two important variable that are rough indicators for determining the legitimacy of a claim to secession. These two variables are:

- (1) the degree of the representativeness of the government; and
- (2) the destabilising effect of a claim to self-determination.

Elaborating these points he said that if a government is undemocratic or autocratic then even a claim to self-determination having greater destabilising effect may be recognised. On the other hand if the government concerned is highly representative then only that claim to self-determination may be recognised to which causes minimum destabilisation. For example, if the government is representative and indigenous people demand education in their language in the name of self-determination such a claim does not create too much destabilising effect and therefore may be recognised as such.

There are other aspects also which may be taken into consideration. For example, severity of a territory. In the case of secession this is a very important point. One of the reasons why secession movement in Bangladesh succeeded was the distance of nearly 1000 miles between East Pakistan and West Pakistan. On the other hand the Biafra claim to secession could not succeed perhaps because of the continuity of the region with the remainder of Nigeria.

According to the Yugoslavian episode it is clear that it is a delimited territory of the former federation, autonomous territory which is entitled to self-determination, not minority. What happened was that the Serbians had formed a majority in certain territorial enclaves of Croatia and Bosnia & Herzegovina. The Serb people are not entitled to external self-determination. A territorial integrity whose boundary has already been delimited under the law can only claim self-determination. Then there are other very important points.

In the context of decolonisation, the implementation and enforcement to the right of self-determination rests on the international support and goodwill. In most of the cases transition took place in a peaceful and orderly manner. What should the claimant groups do when their internationally recognised legitimate claim to self-determination is not recognised, or enforced? Should they have use of force option? Is the use of force by a claimant group for vindication of their right to self-determination is justified in international law? Can outside States make intervention on behalf of the seceding entity? Is the embattled State is entitled to use force to contain secessionist movement and to maintain its territorial integrity?

These are three important questions which also deserves your consideration because we are fighting a proxy war by Pakistan; an outside force, in Kashmir. Kashmir militants are being abetted, financed, instigated and supported by Pakistan in the name of self-determination. We are the victim of terrorism. What options are available to us? Simply that we should request Clinton and Raphael to declare Pakistan as a terrorist state? Or should we also develop a pragmatic foreign policy option? Or should we also think of use of force option ?

I am not an expert on international relations but I cannot support terrorism. We are ourselves the victims of terrorism. Friend Relations Declaration 1970, even the International Court of Justice judgement in Nicaragua said there is no right of intervention in support of the opposition in another state. We are a victim of terrorism and we should think whether India is justified in responding to this threat through use of force. These are some of the observations which I have tried to make.

S.C. KASHYAP: Prof. Nirmal in his paper has referred to self-determination for ethnic communities. I would like to clarify that whether he means territorially identifiable ethnicity or just ethnic community without link with territory. I am not thinking of territorial severability or of territorial contiguity, but I am talking of territorial identifiability related to ethnicity. Because territorial contiguity is no argument in favour or against colonialism. If territorial contiguity was an argument then whole of Europe could be one. Then Mexico could be part of the United States. I think Bangladesh argument is not perhaps relevant. I mean in USSR apart from the fact that secession was constitutionally allowed, the question is whether the nation-states that have now been born, are territorially and ethnically identifiable as nation-states. The break-up

of Soviet Union is really a argument in favour of nation-states because what has now emerged are nation-states. The Soviet Union was not a nation-state. Even according to its Constitution it was a Union of several nations.

B.C. NIRMAL: Self-determination, in classical sense and in romantic sense. If a people exercise their right to self-determination they have a right to defend their territorial integrity. Self-determination provides a connection, in which States should respect the territorial integrity and independence of the whole nation-state. In this sense State and people are synonymous.

Second meaning is where self-determination poses a serious challenge to the existing state structure. So far the international community has attempted to contain the secessionist and revolutionary implications of self-determination by confining its obligation to cases of decolonisation. It appears that in the period ahead self-determination may in itself provide a justification for saving the traditional rules of international law like sovereignty, equality, etc. For example, when Croatian was taking to secession the European Community asked the federal authority not to use force against the seceding group. This is a very crucial question. So far as your question is concerned we should distinguish between internal self-determination and external self-determination.

S.C. KASHYAP: My question is what do you mean by ethnic community and do you support self-determination for ethnic communities?

ALI ASHRAF: Dr Nirmal in your paper you explained what is a people, then you mentioned ethnic groups. Now that requires an answer, how do you delimit the ethnic group and its entitlement to self-determination? That opens the Pandora box.

J.M. MUKHI: As far as I understood Prof. Nirmal for the very first time tried to give us a meaning of the expression 'self-determination'. He says it has got several meanings and there are several degrees of self-determination. Self-determination may mean freedom in a classic sense. It may mean a demand for autonomy for the constituent within a country. In that light ethnicity was a significant factor in the demand for self-determination.

This question I understood was whether by ethnicity you mean the 'blacks' in the United States who don't have a territory, or you mean Red Indians who may be related to a territory?

S.C. KASHYAP: Like the term 'people', 'ethnic group' or 'ethnicity' you have not defined. It has a relationship with this concept of minority. A minority may be spread out and may not have any territorial connection. So would that be inclusive in that?

B.C. NIRMAL: I think I used this expression 'ethnic' in the broader sense meaning both the minority and majority. For example, till recently indigenous people were recognised as a minority. But they do not want to be designated as a minority. For example, Scheduled tribes who live in a particular reserve. I just pointed out various meanings to self-determination and on that aspect a consensus should be developed.

L.L. MEHROTRA: I have three questions.

Is there a UN document which grants the right to self-determination to all peoples and to all the citizens of the world but simultaneously says that this right will not be allowed to impinge on the sovereignty and territorial integrity of a member-state.

My second question is: when you think of ethnicity you run into two problems of definition. One is an ethnic group which within the bounds of a nation-state is territorially diffused. You have a clearly defined ethnic group but it is widely diffused throughout the territory of that country. In the case of India from Kashmir to Kerala from Gujarat to Orissa Muslims are diffused all over the place, a very large number and larger than an ordinary group and larger than the population of many countries of the world taken together. Would they be treated as an ethnic group within the geographical bounds of a nation for the sake of identifying as a group?

My third question is: what is the point of departure for an ethnic group to get the right of self-determination to claim sovereign independence in place of internal autonomy?

R.P. DHOKALIA: The United Nations has not gone into the details of what it means by self-determination. Even in the Charter, in Preamble it speaks again and again, and states "We the peoples of the United Nations". Now here, we the people means what? People of the world community, whole humanity. Here the people really means whole humanity comprising, every human being and all human groups.

S.C. KASHYAP: No, but it uses the word 'people' in plural. It also recognises the plurality among peoples.

R.P. DHOKALIA: The Constitutions of various countries are adopted in the name of 'people,' the people of nationality. People can be seen in different contexts. Here the context is human right. When ethnic questions are raised the context is not independence of those people, but it is in the context of human rights, and their protection. Preamble says that there should be social progress and better standards of life for the people, they should practice tolerance and live together in peace with one another as good neighbours. Here 'people' means the states, people within states. The whole concept has become intertwined. I want to emphasise on the different stages in which self-determination concept in international law has evolved and is evolving.

Colony is illegal in all circumstances. But again the question arises, what is a colony? People speak of neo-colonialism. People speak of communist imperialism. Now there are people's democracies but at which level? What kind of democracy? People's democracies are different type of democracies. We had a dynastic democracy, U. K itself is a theoretic Anglican state because no Catholic can ever become the king or queen of England, but it is secular in practice. We are secular but in theory only whilst religion plays an important role in politics and selection of candidates for legislatures and public offices.

L.L. MEHROTRA: You cannot break the territorial integrity. In the Charter of Human Rights, where the Charter deals with question of the self-determination of the people it establishes their right to self-determination, but simultaneously Article 7 of the Charter does not allow the territorial integrity and sovereignty of a member-state to be divided. If that has to be done it could be by the consent of the people that constitute that sovereign state, as in the case of Czechoslovakia. The Czechs and Slovaks ultimately agreed to be divided. It also provides the formula for unification of Germany, same ethnic people recognised as two independent nations get together and unite.

In the present session of the General Assembly, the Indian representative in one of the reply said that the principle of self-determination in Kashmir does not apply in the same sense as in the other territories because it cannot be violative of the sovereignty and territorial integrity of India, and therefore cannot be so applied. Under cover of this particular article that we hold our own position. Therefore it will have a direct bearing on the question we hold our own position therefore, it will have a direct bearing on the question that we are examining.

Hence my second question, what is the point of departure where the right to autonomy becomes the right to an independent sovereign State? If you can get to the components of that point of departure you will be able to scientifically analyse where Tibet position would be. The answer to the first question is the Charter on Human Rights.

S.D. MUNI: How Bangladesh became independent? Was the break-up of a sovereign territorial unit without the consent of the people who constituted that state.

L.L. MEHROTRA: Now that is where I say that this concept of self-determination has not yet come to the point of crystallisation. That it is possible even by foreign intervention to breakup the sovereign state and that may provide part of the answer to the question that we are examining.

In the case of Bangladesh two things happened. India's position *vis-à-vis* Pakistan's position first. Mrs. Indira Gandhi sending messages to the leadership of Pakistan repeatedly. I know personally as I belonged to the task force on East Pakistan. The

content of the message was: "you have a democracy, you have had an election, in that election a leader of your country comes from a state which holds the majority of the people of the country. Do not deprive that majority to leave your state." It was when Pakistan ignored these messages repeatedly we worked out the meeting between Bhutto and Mujibur before Mujibur left for London, that was in February 1970. By March next year he came back to free Bangladesh. But before he left for London India was hoping that Bhutto, who was foreign minister of Pakistan, when he had gone to meet Mujibur would agree to his coming back to Islamabad and assume the reins of power and if necessary a separate referendum on that point whether they will have the right to autonomy. But when that right was denied it was clearly established that even the representative voice of the people is being scuttled in the nation and the legitimate democratic rights in an atmosphere of freedom is being denied to the people of East Bengal. Then all other elements asserted themselves, then ethnic question that they are a separate language, they are Muslim but they constituted a separate territory, that they are not contiguous and they all came into being.

S.D. MUNI: I think the most fundamental point is that Pakistan Government lost legitimacy over Bangladesh by denying Mujibur Rehman to be the Prime Minister of the whole of Pakistan. My question is not what India did not? My question is why United Nation Organisation voted with 104 votes to deny Bangladesh the existence and negated its own decision after sometime. Now what was the principle? You don't have to convince me on India. The international law issues we are addressing right now are important.

R.P. DHOKALIA: Apart from all these factors which were behind the scene, the United Nations was furnished with sufficient evidence and lot of lobbying was done. Genocide perpetuated in Bangladesh by Pakistan, economic and exploitation and political oppression were talked about.

S.D. MUNI: The United Nations did not accept this. The voting of 104 had taken place in December when the war was going on. The next vote was actually taken at the time when Bangladesh is admitted as a member of the United Nations. This is much later. This is not immediately after the 16th December 1971. In fact there is a very significant time gap between the two.

L.L. MEHROTRA: It is a long time after that Bangladesh is recognised as a member of United Nations and given the right to admission.

J.M. MUKHI: The fact was that Bangladesh was then independently existing. It was a question of recognition.

AJIT BHATTACHARJEA: I have a question for Mr Mehrotra. You were talking about the UN Charter, the member-states and the territorial integrity of the member-state, as a take off point I am seeking a clarification. What about the incorporation of an area by a member-state?

L.L. MEHROTRA: Adding the territory. That is a different category. For example, in certain cases it is easily permissible as was in the case of East Germany and West Germany. Now the UN Charter also admits the need for creating regional entities countries, and regional countries or two or three neighbouring countries can get together.

AJIT BHATTACHARJEA: I say incorporation, you see European Union is not an incorporation of Belgium by the Germans.

L.L. MEHROTRA: But a State can vote itself as a part of another country. Not only by consent but by willing consent.

J.M. MUKHI: Mr Mehrotra if Bangladesh had wanted to reunite with it could India have done so.

L.L. MEHROTRA: Or if Bangladesh wants to reunite with Pakistan again today.

S.D. MUNI: I am thinking of Tibet and China where Tibet has been incorporated by aggression.

L.L. MEHROTRA: No not by incorporation. Incorporation by aggression that is not permissible. I said incorporation by willing consent.

S.D. MUNI: But then China was not a member of the United Nations.

NARESH MATHUR: This extends to only member-states then or subsequent members also?

L.L. MEHROTRA: Any two member-states who want to become one State can do so by joining by willing consent. We have the example of UAR (United Arab Republic) which became one single State out of three States by common consent but separated again — Syria, Libya and Egypt. This has happened within the life of the United Nations. Singapore and Malaysia were together but they separated again.

R.P. DHOKALIA: In international community it is not that law governs politics, it is the politics that governs the law because it is not a very matured entity. It has taken

centuries for it to evolve international law as it is. As far as recognition is concerned if there is a *de facto* existence of a State it becomes *de jure*. Just as in case of a *coup-d'etat* if it is successful it becomes *de jure*.

S.D. MUNI: Both presentations mentioned about integration at the global level and disintegration between the nations in terms of ethnicity, democracy, and ideology. To my mind the two processes are linked somewhere. They have been presented as separate processes, I see them as one in relation to the other. In fact too much of integration and globalisation where homogenisation of the societies have not yet taken place has put the identities as well as the States under a severe pressure of survival. That is the reason why the identities in terms of ethnic groups and States in most of the developing world are retaliating against this intrusion into sovereignty and state boundaries from the forces of globalisation and globalism. This point is very vital for us to understand because we cannot talk of one global context. In fact the context of politics are certainly at least at two levels if not more and that is of the developed world and of the underdeveloped world. The State and sovereignty are consolidated into government and there is a powerful glue which we often ignore, of prosperity which links them together.

I have a crazy hypothesis that tomorrow if Americans go poor they will face the same problems which we are facing — of the Mexicans, the Blacks, the Asians, of everybody. So it is a glue which is not available to the developing world and therefore you see these problems of globalisation really generating forces of what we call destruction and disintegration. You must look at it very carefully and in either of the papers it is not mentioned.

The second missing factor, which again is not in the two papers which has more of international legal perspective.

I am a student of international politics and what is missing is politics and strategic interests. Most of the legal interpretation are actually governed by and dictated, to that extent, by the exigencies of politics and strategic interests. I am afraid we simply cannot ignore it. That is my answer to recognition of Bangladesh. That there were political and strategic interests which did not want Bangladesh to come into existence and once these political and strategic interests failed to stop the process they had to reconcile. These are two very different phenomenon but actually this is what which is at the root.

If that point is accepted then you must take this point Prof. Rinpoche, the factor of strategy and political interest are very vital in understanding Tibetan problem both in terms of the region as also in terms of the global order or global politics and balance on that. We must be careful that Tibet should not in search for its identity and self-determination unwittingly become a tool in hands of the forces of international strategic and political factors which may sometimes harm, if you look at Yugoslavia, the country rather than help though legally the situation is different.

So we must actually comprehend these forces which may oppose the interests of Tibet.

I would also add a caveat which should also help us to understand many of the UN resolutions which we take as sacrosanct. The United Nations does not work on the basis of principles and legal orders, it works on the basis of politics and strategic interests of the dominant factors and forces. The UN which was being neglected, almost humiliated, almost allowed to die out of hunger, resources and funds is now being given a new sacrosanct pious kind of an image, not because UN has achieved the zero legitimacy but because the dimension of international politics has changed. So we must discuss if at all we want to understand.

When we are discussing ethnic groups seeking separation and self-determination a question arises that not all ethnic groups are asking for separation. Then the question arises why some ethnic groups are actually seeking separation, self-determination and secession and the answer lies because there is a reference to self-determination as a remedy. Self-determination as a remedy can be applied if you know the disease. I mean you cannot administer anacin to a patient of cancer, it just won't help. Disease to my mind lies, as Prof. Rinpoche also said, in continuous discrimination, exploitation, economic deprivation — so many other factors are there. Actually the ethnic diversity by itself is not conflictual. There are historical examples of different diverse ethnic groups coexisting peacefully and productively without any problem. There is something which makes this diversity conflictual. There is a journey which this ethnic diversity makes from diversity to become in conflictual. I would say we should look into these factors which is a very different cup of tea then having a legal definition.

ALI ASHRAF: Are you saying that economics is determining criteria?

S.D. MUNI: No I am not saying anything, but the fact is the same ethnic group is happy to live together on one point of time and not another.

L.L. MEHROTRA: And that is the point of departure where the ethnic group wants to and is entitled to an independent entity.

ALI ASHRAF: So you have to diagnose the disease first.

B.C. NIRMAL: When I said that we are living in the age of paradoxes, on one hand globalisation and another hand fragmentation and disintegration, in fact I said globalisation phenomenon is also a conditioning factor like the factor of separatism. But I made a proposition to show that too much fragmentation or disintegration or separatism in the name of self-determination may be disastrous for a nation. On the other hand you may find that the States are too small to solve certain problems of

global concern so we need cooperation. Even European States have come into unison and are coming closer, and this development is also visible in other parts of the world. On the other hand we also find that in larger democracies like India, where everything is ruled from Delhi, things are not being managed properly.

If States are too large to care for the local needs, there is a question of giving a degree of self-management or autonomy, not autonomy in the sense of territorial separation, linguistic and cultural autonomy but like Greenland home rule. So there are various models of autonomy.

The discussion has mainly centred on one aspect of self-determination because of the linkage of self-determination with secession and decolonisation I find a great debate. We are concentrating only on one aspect of self-determination whereas I tried to convince the seminarians that there are other aspects of self-determination. Why don't we concentrate on other aspects.

We try to understand of self-determination in the sense of secession but there are certain paradigms which are in the process of devolution. There is certainly the case of Bangladesh. Those who have attempted to evolve paradigms for secession in the light of Bangladesh have failed. Suppose a minority is denied its placement rights by the majority, should that minority wait for the majority consent for an indefinite period? Coming to Article 24 which defines territorial integrity in the UN Charter, why the same international community provided the protection of Article 24 to non-state entities like Croatia but the provision of Article 24 was applied even to entities to secede in the recent events which we saw.

Suppose consent is not available then what should persecuted minorities do? In this context both the Friendly Relations Declaration (1970) and the Vienna Declaration on Human Rights says that the State is removed from claim to external self-determination so long as it represents all people without any distinction. If a government represents all the people, now I will come to a question which Dr. Muni raised, now if minorities are granted human rights and minority rights there is no reason why they should make claim to secession or to live at the mercy of others. So there should be an effective guarantee of human rights. I think this would solve most of our problems. Wherever this is not enough there certain degree of autonomy you can provide. Our Constitution provides for certain degree of autonomy for Schedule Tribes under Schedule 5 and 6 of the Constitution. Every State and people should decide what type of autonomy should be given. As someone has said "international law of self-determination should not be seen as a set of ready-made substantive solutions but in terms of a procedure for bringing about an acceptable and ad-hoc adjustment."

J.M. MUKHI: I do not know whether we are discussing international law or internal constitutional law or political science. The principle of international law is undergoing a change but within the bounds of a country there may be constitutional changes,

there may be demands for regional justice, there may be demands for autonomy, in certain respects in that descending order of self-determination. Is there an overlap of international law to the extent that if a certain section within a country demands economic autonomy or cultural autonomy or a language to be put in the schedule of a Constitution there is a principle of international law which can enable the international community to attempt an intervention, where there is a violation there. That's the question I want to address.

Is there an overlap between a constitutional discussion within a country and international law to the extent that even in that smaller reduced meaning of self-determination the international community can raise a voice?

R.P. DHOKALIA: Let me explain certain issues, legitimacy of state authority and legitimacy of the right to self-determination. We have to examine the Tibetan question in the conceptual background. We have examples of all kinds. We are not discussing international law, we are not discussing politics. We have to discuss self-determination vis-à-vis state, whether ethnic or anything, recognition is to be given by the local constitutional law and by international law or by people. It has to be legal, political, moral. China exercising authority over Tibet, what does this mean? Legitimacy — politically, legally or morally. Or what ought to be in any situation.

Secondly, Tibetans are asking for self-determination. What is the legitimacy of the state legally, politically and morally. If you are clear about these we can examine legitimacy of state authority.

ALI ASHRAF: What is happening in former Yugoslavia? It is very intriguing that it is divided into various independent states on the grounds of ethnicity but again ethnicity becomes a further dividing factor within each constituent. So Bosnia and Herzegovina is separate but again the question of minority Serbs within Bosnia and Herzegovina. So it can really be an endless process in the name of self-determination. So where do we stop?

These are very practical and basic questions and there is no doubt that many of the issues though couched in the language of the law or in the norms they are decided on a very hardheaded consideration of national self-interest or a calculation of power politics. Nevertheless the question is that there has to be certain balancing of ideals and political considerations. Ultimately even questions that are asked by the credential committee in the United Nations before a member-state is admitted is whether it can defend its independence. The ability to defend yourself is also a very important question.

I am saying that we have to take into account not only the normative considerations, which are very important which shall also serve as a criteria for further decision, but also the ground reality of international politics, national politics and how to balance these things.

We can focus some of these issues keeping in mind their application to Tibet. We should also take into account the Indian situation. We will have occasions to comment on that, but we sometimes overdraw the comparison or contrast between India and similar situations in China or elsewhere. In our case historical and political conditions are different. In fact it seems that we survived because we allowed autonomy and freedom and we practice this in the framework of democracy which may not be existing in other situations. All these are important considerations.

So before we make comparisons or admit the claims of a particular state or region we have to take into account the conditions in which, as Prof. Muni rightly drew our attention to the fact, an ethnic group is happy to exist within the larger framework of national integration or the conditions in which an ethnic group likes to stay out.

These are very practical questions which we should take into account. This will also enable us to know the difficulties or the handicaps in a particular movement to promote autonomy or independence of a particular case and how to deal with this. Well of course this will be a part of the remedies that you have the right to self-determination, but to what extent you can go and what are the difficulties that need to be overcome. All these are important questions.

J.M. MUKHI: As I see it this boggy of the principle of self-determination has been setup as a sort of a defence or diversion. The proposition is: Tibet was independent. Tibetans were a free people and in 1950 they were invaded contrary to the principles of international law and their freedom was extinguished and they are today entitled to regain that independence. The world community has moral and legal obligation to see that this independence is regained for them.

To that China's answer to Indians is that you are talking about self-determination but what about self-determination in Kashmir? Therefore the attempt is to put us on the defensive so that we should examine state authority, limits of state authority and why can't people ask for self-determination. Some people are putting that question on behalf of China.

Why do we have to get deflected from the main issue of independence and then dissent into self-determination by ethnic groups or some brands, or are we on the defensive in relation to a proxy war. I find it is putting the cart before the horse. We must discuss that and then later on see whether there is any worth in what might be put against us.

S.D. MUNI: I endorse your position by saying that in that case the question has to be addressed is whether we put self-determination in the colonial category which was put earlier, because in the colonial category there is no dispute or debate on self-determination. It is accepted by the UN body and if Tibet is taken as an example of a country which has been colonised through the use of force, then many other categories we are discussing may be put into place.

NARESH MATHUR: Several of these Vienna Law Treaties and declaration of aggression came subsequent to the aggression in Tibet. Before that we were governed by the customary principles of international law. So we need to understand what were these customary principles because of the time that Mr. Mukhi is speaking of we would perforce have to refer to that. So let us try to find out what these customary principles were and we can apply them at that time. If we are going back to the time of what Mr Mukhi is speaking of, or even earlier, we may need to go even earlier back to 1911 prior to 1949.

ALI ASHRAF: What Mr. Mathur is saying is that the legality or the illegality of the Chinese invasion or so-called communist liberation of Tibet in 1950 has to be assessed not by the present norms but by the norms existing at that time. China was at that time an outlaw. China had not been recognised by any country in the world. That is the question.

R.P. DHOKALIA: What about Goa? You took over Goa and gave the argument of decolonisation, the right to liberate our own territory. You did this in Hyderabad. It is liberation for India but aggression for others.

S.D. MUNI: Goa is again a decolonised territory and should be seen in different way.

R.P. DHOKALIA: China says it had suzerainty over Tibet. The point really comes to this that the consent of people is most important. Your justification in Goa is that the people as a whole stood for their liberation. Tibetans never asked for liberation of any kind from Dalai Lama for China to intervene as a saviour.

J.M. MUKHI: It is not that all the people of Goa welcomed our coming in. That is not right. There was a substantial section of Goans who considered our going in to be an invasion. We are not here however to talk about two wrongs making a right. We don't want that. We want an answer to the question put by Mr. Mathur that is China's invasion of Tibet in legality, in morality, in propriety to be considered in accordance with today's norms or in the supposed norms of 1950?

I think the supposed norms of 1950 were that in the United Nations China's invasion was considered as an abhorrent act and it was only at India's suggestion that the issue was shelved. That is a fact and can be seen in the records. The world opinion was against it but since Tibet was not near like Haiti and was far away they said it was India's responsibility, and if India the most interested country is not interested so be it.

S.C. KASHYAP: Is there any difficulty under international law or otherwise to recognise Tibet as occupied territory or as a colony? Is there anything?

R.P. DHOKALIA: I am not concerned with invasion or aggression what I am saying today is state authority over people anywhere in the world, what is its legitimacy?

S.C. KASHYAP: Can we not accept the position that Tibet is a colony of China today or that it is an occupied territory and that the occupation is the result of aggression?

L.L. MEHROTRA: Since we have to reach a point of focus for our deliberations, there cannot be in today's world much dispute over the fact that a state derives its authority from the willing consent of the people. That willing consent can be obtained through democratic institutions, as they prevail in liberal societies, or even under a Socialistic setup, which China follows. Even China admits that willing consent is necessary when they say they are a legitimate government of China. This fact is not disputed in the United Nations. The United States has said umpteen times, it has talked of the evil empire of the Soviet Union, but even the United States of America has refrained from, to this date, talking about the evil empire of the Chinese. I am talking of pertinent points. Theoretically you can carry that debate on to 184 countries and how the willing consent principle will apply. There cannot be any doubt that a State derives its authority in the world of today from the willing consent of the people. Whichever way that willing consent is framed or expressed or finds utterance is a formula which can be debated. Whether formula A is better, formula B is better, or C that can be debated. But the willing consent of a people to be governed in a certain way is necessary to confer legitimacy on that particular form of government.

If we can accept this and then depart to the other question as to whether we elect to touch our nose this way or we elect to touch it the other way is also something very germane to this issue: that is, what happened to Tibet, in 1950. There is an event in history which changed the course of history of that region. There are two interpretations of this. One is that the course of history changed at the hands of the Chinese legitimately because the Chinese had certain authority over Tibet. The other view is that this is blatantly wrong, the Chinese had neither any political nor any legal nor any moral right to enter Tibet with force in 1950 and move matters to a point where the spiritual and the political head of that state had to leave the country and is now in India.

In order to channel our discussion on the first point — the legal point, some discussion has already taken place though not exhaustive. On the other issue however, no discussion has yet taken place whether the Chinese did commit an act of aggression and whether Tibet has therefore come under the colonised category or not. We may decide whether we should carry on with the legal argument further and establish our parameters for debate on the issue or we should transfer our deliberations, momentarily and temporarily, to reflections on the other aspects germane to the issue: what exactly happened in 1950. Whether it impinged on

the status of Tibet, if it impinged on the status of Tibet which day and which way, and whether we have a right to struggle against it, or whether even if it is right to struggle against it we are in no position to do it or whether there are certain ways available.

NARESH MATHUR: We must talk also about 1951 when the Seventeen-point Agreement was signed. The International Commission of Jurists pronounced that agreement as void as if Tibet's sovereignty had never been interrupted.

ALI ASHRAF: Before that, I think, it is legitimate to begin with the legality of Chinese action and making it neutral-Chinese action in 1950. So China *vis-à-vis* Tibet what was the status of Tibet and then and what were the historical points. Even in the document here there are some papers which I found very interesting and relevant but I would like more. The point I am in agreement with is that we have been raising the question of legitimacy of the state authority, now unless we like to continue this abstract discussion, this is the point most appropriate for applying this question to the case of China and Tibet, and the legitimacy for Chinese authority in relation to Tibet. So we are only extending your general formulation to a specific question of legitimacy of Chinese authority in Tibet in 1950.

R.P. DHOKALIA: On consent we have a consensus. Can we come as a result of that discussion to some conclusion that: self-determination right of the people has a legitimacy on the basis of this criterion or these criteria. Then later on have a very fruitful discussion.

ALI VAJRA SAKYA: With regards to the self-determination issue, I think we have been discussing in one context — the secession issue but actually self-determination is not really just an issue of national independence, its much broader — in that the United Nations Charter declaration, international conventions on economic social rights indicate the very broad expanse of definition that its not just only national independence of states, and sovereignty rather the free determination of political status. A political status we can see this much broader and sort of self-determination its not just right to secede. Its flexible enough to really in terms of lesser autonomy. So in that respect I am not supporting an autonomous Tibet, I am saying self-determination concept can deal with the concept of autonomy within a broader territorial structure.

S.C. KASHYAP: I'd just like to ask a very limited question. Which route should we take the route of decolonisation or the other through self-determination. Self-determination the objective can be independence or less than independence but decolonisation is only one objective and that is independence. So it makes a lot of

difference which approach we accept. Then we can extend our objective to what we are aiming at. So I think we should be very clear about that and its not both, its neither or approach. We must be clear which route we recommend.

R.P. DHOKALIA: The question is what does self-determination mean in different contexts?

First, context is colony.

Second, context is violation of human rights by the state.

Third, political oppression, nonexistence of any democratic setup; economic exploitation and genocide. These are the three contexts.

In case of colony, independence is the only way. If Tibet is a colony, if we come to that conclusion then there is no problem because independence is the only way.

Secondly, if there is a widespread violation of human rights, abuse of human rights, the state requires international pressure on the government concerned to stop it.

If it is concerned with genocide on a vast scale, transfer of population is there and the very question of survival of people is involved in it, and there is no way out for the people except to resort to violence or revolt then what is the duty of international community to provide a remedy to them?

As Prof. Rinpoche has pointed out, we are to examine the question in objective manner with a view to come to a consensus. My suggestion is this: can we first arrive at what 'ought' to be and then examine that 'ought' in the context of 'is' and have the benefit of Prof. Muni and yourself that this is our prescription, morally, legally, politically, and historically. This situation is this, and then in this situation what is acceptable we have to examine whether it is possible as it happened sometime back for Vatican State or Holy Sea to acquire a status which is unique in history. Is it possible to have such a kind of status similar to Holy Sea for Tibet? So that it does not become a sovereign state in the real sense of the term but at the same time their cultural identity, their spiritual leadership over the Buddhist all over the world is accepted. In the context that this movement is entirely nonviolent will you force the people of Tibet, younger people who are being trained here, who are educated here to resort to arms? So for all prescriptions if you apply your mind, apply to it - what is the 'ought' situation and then examine the 'is' situation — in reality, pragmatically and then provide a remedy.

S.D. MUNI: In defining the 'ought' you should not define in such a way that 'is' does becomes impossible?

J.M. MUKHI: On the contrary I think 'is' should not influence 'ought'. Let us first see what is the correct situation then we adopt the role which Mr Bhattacharjea is advocating what is a correct role. Then at the end of our discussions if we have

any wisdom to give as to the practicalities then we shall certainly do so how best Tibet can achieve its aims but that must follow after understanding what is the correct thing.

ALI ASHRAF: It is perfectly legitimate to keep in mind the question of what 'ought' to be, because it provides that standard of judgement as to what is a right. So this is legitimate. On the other hand there is also a danger that 'ought' would be for a jurist of natural law. Now you can have all the nice things under natural law and there are other ways of achieving the end. For example, historically what was the status, if I am free today and tomorrow you enslave me without consideration of the 'ought' I want to recover my freedom. So, as Mr Mathur mentioned International Commission of Jurists about that Seventeen-point Agreement being void.

If there is historical evidence of the autonomy or independence of Tibet which Tibet lost in the 1950's then do you not think that is sufficient ground enough for the recovery of the lost independence while it is legitimate to consider the question 'ought'. In fact Prof. Dhokalia did an excellent job in talking about the formative legal provision of it and we have enough of the basis, instead of going ahead, and I would like to go back to examine the historical realistic evidence of the ground on which Tibet can raise the claim for the recovery of those rights.

The third dimension of course, there is a danger that we might become so much obsessed with the constraint of "is" that we really do not have the courage to move forward because China will not listen to it, or may be there is some other complication. So 'is' is very important but 'ought' the historical status of Tibet be discussed and then see what are the practical, pragmatical remedies, from public opinion to violence.

ANI VAJRA SAKYA: What's being said is very important. I think 'ought' is very important. We don't want to appear biased in anyway. I think we have discussed the concept of self-determination generally keeping in mind what is aspiration, what is constructive and positive towards Tibet and also try to make a picture.

R.P. DHOKALIA: My first question is what self-determination means in different contexts. At what point of time and under what conditions people can claim self-determination in the sense of independence?

S.D. MUNI: The first condition would be that there should be a 'people'.

R.P. DHOKALIA: So people can have claim to legitimate self-determination in case of colonial rule and in case of aggression, occupation and genocide, transfer of population, lack of responsive government and then their question of survival vis-à-vis the state.

S.D. MUNI: I would like to raise some of the points like the concept of 'people'. An attempt has been made in a paper and I would like to draw attention to it but there are ambiguities in some of the things.

Mr Mehrotra has referred to this criteria of common features³. There is also a reference to additional criteria and the economic viability. It is ambiguous.

Secondly, about this criteria who actually decides. If people have linguistic unity or cultural identity or homogeneity — this is the ambiguous part of the whole international legal document. We must be aware of it when we are talking about the people. We are assuming that some of these criteria existed but which may or may not be acceptable to the parties concerned. This is about the people who do not realise the nature of this criteria.

NARESH MATHUR: Who decides?

S.D. MUNI: I am not just raising the questions but we should be honest about it. Who decides depends in a given context. For instance, Tibetans say that we are a people and the Chinese say that you are not. What do you do in that situation. Or the Chinese say that we are the people and the international community says that they are not. I am only saying that this is an ambiguous area and we should be cautious about it.

Second, we have been using the concept of legitimacy. With apology and respect to Prof. Dhokalia you are stretching the question of legitimacy too far. The concept is not that elastic. If you take it to governmental opposition or dissent or consent you run into a plethora of other problems. In addition to that the consent of the governed is very vague concept. The problem of this is that it is the systems that we are trying to analyse, when we talk about the Chinese system the question is whether the consent of the people is inherent in that system? It does not matter to us as to how this consent is being sought or how this consent is supposed to be giving legitimacy to the system? It is not only the communist system, I am not posing the cold war question between democracy and communism, but there exists all kinds of monarchies in West Asia today. Now is it not our concern to express as to how this consent is being obtained and is it not related to legitimacy? If not then we are not really discussing the erosion of that. What we have decided to do is to accept at the face value of whatever the State says. The State says that it has the consent of its people and we keep shut. That is not an 'ought' explanation but it is 'is' explanation. You are talking about your explanation and it is not enough to say that the consent of the people is necessary. In Nepal ten years earlier the King said that 'God had given him the right to rule'. It simply does not matter as to how you are getting your people to accept. That right gives the rulers of Saudi Arabia the right to rule.

³ See ante, p. 79-81.

R.P. DHOKALIA: My formulation is: Democracies are of different varieties but how can you ascertain that it has the consent. In Arab countries no problem arises and nobody raises their voice. We are pinpointing problems of those people who are shouting at the top of their voice, making hue and cry, creating world public opinion, resorting to violence, or resorting to peaceful campaigns and raising it at international and local forums. In countries where people have not raised their voice, they accept existing form of government, but democracies where people have raised their voices at the national and international level they have to be taken into cognisance and examined. If the sizeable self-defined people with roots on a territory and a compact inhabitation are confronted with the prospect of extinction due to the deliberate and sustained policy of the State on the basis of discrimination and economic exploitation, if that community is a victim of genocide, demographic aggression, blatant violation and abuse of human rights, and if all the political doors for compromise are closed and arbitrarily rejected by the metropolitan governments leaving no options but to assert their legitimate claim for independence, self-determination in that sense is legitimate.

L.L. MEHROTRA: There is a little comment on that. When you say that all doors of negotiations for their independence are closed I would say all doors for negotiations for the legitimate exercise of their right to self-determination are closed. It may be independence or autonomy or whatever. They may not be wanting independence.

NARESH MATHUR: This point is very important to understand. There is a certain interpretation of this Strasbourg and other proposals and there is an assumption of independence in-built there.

L.L. MEHROTRA: That reference is there, but you need not refer to independence because when the right to self-determination is exercised this point will be raised whether they want independence or second or third category. They should have a right to exercise their right to self-determination. When that right is suppressed then the situation arises and the international community comes into picture, otherwise there is no scope for others. The minute you talk of independence you are closing the doors for any political negotiations in a million other cases where the people will remain suppressed because either they have not asked for independence or they are not in a position to ask for it or they have not chosen to ask.

R.P. DHOKALIA: When the doors are closed and no negotiations are possible intervention by world community may be required as in the case of Haiti.

L.L. MEHROTRA: Therefore, I say that reference to independence may create problems. It is important for the people to decide in what category they want self-

determination. Once the people of Tibet have the opportunity to exercise their right to self-determination they may seek independence or they may be content with autonomy. If they would be content with autonomy what will be the measure of autonomy, whether it would be defence or external affairs, this that and the other, etc. In that context I am making that point.

R.P. DHOKALIA: Considering that democracy has become a global entitlement, and all governments recognise and seek the valediction of their authority to govern on the basis of the consent of the governed everywhere, it is an international obligation to comply with the criteria of democracy and rule of law, for the validation of government's authority over a people.

The approach was that you have to judge the question of legitimacy of Chinese authority over Tibet, and legitimacy of assertion of right of self-determination by the Tibetan people *vis-à-vis* the Chinese in context of certain conceptual clarity.

From the discussions it emerged as a principle that State or country or people's authority depends on the consent.

Secondly, notwithstanding the expanding variety of circumstances and complexities having an impact on the content and application of the collective human right of self-determination recognised by contemporary international law, which raised questions of morality and politics, this right clearly encompasses today three aspects.

One, the legitimacy of the right of the colonies in any form to become independent. The legitimacy of the right of peoples anywhere to protection of their human rights. There, the legitimacy of the right to people within existing states to have internal self-determination by way of self-rule, self-development and democratic pluralism notwithstanding inviolability of political and territorial integrity of existing states recognised by UN Charter.

In case of sizeable self-defined people within a state having roots on a territory with compact inhabitation and having a distinct identity, ethnically, historically, culturally, they have legitimate claim to express their wishes under UN monitored plebiscite in order to determine their status, in the following four core situations.

1. When confronted with the prospects of demise as a result of deliberate and sustained policy of the state perpetuating discrimination, political oppression and economic exploitation;
2. When they have been a victim of alien occupation, genocide and demographic aggression,
3. When they are subjected to blatant denial and violation of human rights.
4. When all those of political peaceful solution are closed and their rights rejected by the state concerned.

L.L. MEHROTRA: This is a very critical statement with many ramifications and this should be discussed.

S.D. MUNI: The right of self-determination is a basic right of the people and they have right of assertion of political and economic rights. This right becomes all the more valid if their human rights and democratic rights are further curtailed.

S.C. KASHYAP: I will not like the UN monitored plebiscite.

The second small suggestion when we refer to human rights. I would like it to be expanded a little, one individual and collective, and second a little more elaboration of how human rights are being rejected.

NARESH MATHUR: I would like the question of continuity be part of consensus draft.

B.C. NIRMAL: I think there are two three issues on which we have already reached consensus. If you feel that right to the self-determination is a recognised right under international human rights, then there is no dispute about it. Second point, if you feel that Tibetan people are a people under international law then there is no harm in saying they are entitled to right of self-determination. Now, if you have any reservation for any reason whatsoever instead of interpreting it, it could be put in a statement.

AJIT BHATTACHARJEA: In the drafting of the statement formula we have to be very clear about what we can achieve, and what are we aiming at. Though the case has been made very strongly for independence, yet, that may not get us very far, when we are either trying to get world opinion on our side or the backing of the media also that is the reality of the situation. It will also not enable the Tibetans to cope with the dialogue with the Chinese. Although the Chinese are not going to agree but they could come nearer something to do with the legality of this situation. In drafting our opinion we have to keep these realities in mind. In emphasizing independence we are closing up a large number of options, but if we are using the word self-determination we are not, because that is acceptable to the world community and in various formulations by many others including the Government of India. So we have to keep these realities of international world in mind when we are formulating our official position. I suggest that we do not strike out too strongly on such issues of independence without keeping these other factors in mind because it may make it difficult to follow it up thereafter.

J.M. MUKHI: I think we will discuss the realities and strategies in the final session but in the draft we will keep the realities and strategies in mind. Now may I just read out a draft.

The right to self-determination and independence is a universally recognised right of people subjugated by imperial and colonial control. This right

becomes all the more urgent when human and democratic rights of the people who had enjoyed undisputed independence and freedom are trampled upon by the use of force in flagrant violation of the expressed will of the international community.

VAN PRAAG: My paper on self-determination has been written from European point of view and for an western audience. Each region has its own philosophical background to the concept. What I am trying to do in this paper is to tell the people in the west what their concepts are and why they should respond to them at this particular time. If one were to try to argue with governments in Asia a different approach may be needed.

In western tradition, self-determination is inseparable from the notion of democracy. If you can choose who you are going to elect as your rulers, then you should be able to choose whether those rulers are going to be your own people or they are going to be some foreign powers that have a totally different interest than yours. So those two things are very difficult to separate.

Self-determination is a fundamental principle, both philosophical and legal, and not something that has only existed in a short period of time. In other words it is not a post-world war II situation that arose then or it is new, on the other hand the legal interpretation of self-determination is very much something which is time bound and which changes. The philosophical concept, the moral concept of self-determination is much more fundamental and that cannot really be extinguished by legislation or different perception of international law.

The whole question of peoples and States having the right to self-determination has been dealt by Mr. Mehrotra. Decolonisation is a special expression of self-determination and in the case of Tibet one can look at it in two ways. One can say Tibet is an application of the right to self-determination as a colonial situation. What is a colony was described by Prof. Dhokalia, colonialism exists in a situation where there is political oppression and economic exploitation, and that is legal and therefore there is right to external self-determination. If we were to analyse that approach and see what we can do with it, there would be very strong argument with relation to Tibet and the right to self-determination.

At the same time one can also say that Tibet is a slightly different situation than your classical salt water colonialism situation. But then one can look at other cases, Estonia, Western Sahara, Eritria which are also not classical colonial situations, it is a continuation of previous colonial situation. Then there are other expressions of self-determination that are not necessarily independent such as Greenland, Belgium and Quebec. They are all expressions and recognition of right of self-determination. Quebec has been recognised to have that right. They chose through referendum not to separate, but that was in itself an exercise of the right of self-determination. These are expressions which show that in a contemporary international law or at least in state practice there

is a great extent of recognition for self-determination even where it is not strictly colonialism.

I agree with the human rights approach and would like to add that if one looks at the Declaration of Friendly Relations (1970) of the UN, and put together the Vienna Declaration and the whole issue of legitimacy, you end up with a package which is very clean and useful, namely that even in the Friendly Declaration there is the legitimacy issue. There it is said that a State can make an appeal to the principle of territorial integrity or can use the territorial integrity against the claim for self-determination where that State acts in compliance with the principle of self-determination, meaning that it has a government which represents the whole people. That is the notion again of legitimacy. It has to represent the people in that entire territory for it to be considered to act in accordance with the principles of self-determination. If it does not, then the question arises about whether it can use territorial integrity to counter a claim for self-determination. So, even there one comes to a full circle.

PART FOUR

DISCUSSION ON

LEGITIMACY OF STATE AUTHORITY



LEGITIMACY OF STATE AUTHORITY

1. THE HISTORICAL PERSPECTIVE

L.L. MEHROTRA: What was the historical status of Tibet in 1944-45 when the United Nations was established? What was the Chinese influence in that territory? What was the Chinese representation in that territory? What was the Chinese presence in that territory? What was the Chinese interaction with Tibet at that point in the history of the region?

PRC claims that it has a right to 'ownership' of Tibet not on the basis of its military conquest of 1959 or on the basis of its effective control over Tibet since 1951 or even on the basis of the Seventeen-point Agreement between China and Tibet. The PRC actually bases its claim of ownership on Tibet in historical terms primarily on the Mongol or Manchu rulers and the relationship of these rulers with the Tibetan lamas. They cite a treaty that was signed in the year 821/823 AD. There are episodes that happened between 820 and 823 when the treaty came into effect, though it was signed in 821. The treaty talks of Bisan-Po, the 'great king of Tibet' and Hwang Te 'the great king of China' as nephew and uncle, and so the Chinese say we were uncle he was nephew and therefore this is an eternal relationship, and a dependent relationship. The Chinese call it the dependent relationship. They don't use autonomous in that context but the text of that treaty does not bear that out. The Treaty of 821 is a peace treaty between the two countries. They conflicted and clashed and came to a decision that hence forth "no smoke or dust" shall appear between them "not even a word of sudden alarm or enmity shall be spoken." China, on the other hand treats this treaty as evidence of China's sovereignty over Tibet with the Tibetan king placing his land squarely and perpetually under the umbrella of the Chinese empire, which is not borne out by the treaty itself. Historically it is absurd, that Tibet would place themselves in a dependent relationship with China and sign a treaty of dependence when the objective of the treaty was to contain the Tibetans within a certain territorial periphery.

It was a sequel to the expansion of the Tibetan empire under the rule of Trisong Detsen from 755 to 797 who invaded parts of China including the capital Changang. Now Changang is modern Xian, which they claim as part of China, and he forced China to pay an annual tribute to Tibet.

There are many references in Chinese documents about tributes coming from Tibet to China but in this particular case Chinese were paying tribute. If China can lay claim on Tibet because Tibet paid tribute to China, the first claim is of Tibet over China because the Chinese were paying material tributes to Tibet. This is borne out of this treaty. The new ruler Tsenpo who succeeded Trisong Detsen had no reason whatsoever in 821 AD to accept an inferior status *vis a vis* the Chinese emperor, Tibet actually being in a superior position. The reference to the Chinese emperor as uncle denotes a personal relationship between two equals desiring peace and enjoying sovereignty within their territorial bounds. The text of this treaty was inscribed in both Chinese and Tibetan languages on three stone pillars, one is Gungu Meru to demarcate the border between the two countries, the second in Lhasa, capital of Tibet and the third in Changma, the Chinese capital. You see the equality of status. One is in the Chinese capital, the other is in the Tibetan capital and the third is in a border province. Far from establishing a union between China and Tibet as the Chinese interpret it the treaty of 821 was a non aggression pact between two equals. *Inter alia* the treaty states:

Both Tibet and China shall keep the country and frontiers of which they are now in possession. The whole region to east of that being the country of great China and the whole region to the west being assuredly the great country of Great Tibet. From either side of that frontier, there shall be no warfare, no hostile invasion and no seizure of territory.

Even if the Chinese had not cited this earlier, I would cite this 821 Treaty. The 821 treaty is a solemn commitment on the part of the two nations to uphold peace as equals. The treaty concludes:

And in order that this agreement establishing a great era when Tibetans shall be happy in Tibet and Chinese shall be happy in China shall *never* be changed, the three Jewels, the body of saints, the sun and moon, planets and stars have been invoked as witness; its purpose has been expounded in solemn words; the oath has been sworn with the sacrifice of animals; and the agreement has been solemnised.

This was no union, it was the charter of their independence and a solemn vow of good neighbourliness. The two great kings proclaimed and this is how the treaty ended:

Having consulted to consolidate it still further the measure of neighbourly contentment, they have made a great treaty.

Now there are many facets of this Cho-Yon relationship. Cho-Yon means priest-patron. It was established between the Mongols and the Tibetans, the Mongol emperor, Prince Godan Khan grandson of Chengis Khan and the Tibetan Lama who was not yet called the Dalai Lama. The Lama was invited from Lhasa to visit Mongolia and to give to the people the message of the Buddha, and to ensure heaven for the ruler of the Mongol empire. So in return the spiritual protection granted to him by the Tibetan Lama, he called the latter great ocean of wisdom. That is a Mongol word not a Chinese word, given by a Mongol emperor. And in return for receiving this spiritual protection from one whom he accepts as a spiritual master, he the Mongol Emperor undertakes to give him physical protection. This is like a relationship between him and his *guru* whom he must protect physically under all circumstances because he is the guarantor of his soul. In this relationship there is no dependency at all. Even if there is a relationship of dependency, it is of the Mongol ruler on his spiritual master. Moreover the Chinese cannot claim to inherit it because they have allowed Mongolia to be a free and independent state. Even if one were to suppose that the Chinese had inherited the whole of the Mongol empire, under Chengis Khan, under Altai Khan, under Kublai Khan, say right up to Rome, the fact of the matter is that history of the world has not got frozen at that point of time, and since then apart from other national entities that have come out of the great Mongol empire, Mongolia itself has become a free entity, out of the Chinese control. So that cannot be the basis of their assertion of their right to ownership of Tibet. This is what I wanted to say. If there was a period of time when Tibet had asserted itself as an independent entity and was acting as an independent nation, it would be sufficient to assert the fact that in historical time Tibet had become an independent country, and was functioning as such. Now we have to see whether that was the status Tibet enjoyed when the Chinese came in 1950-51.

Question: Whether Kublai Khan gave recognition or full sovereignty to Tibet?

L.L. Mehrotra: They had because they called it spiritual relationship. Unless you accept the sovereignty of your spiritual master, you can't get spiritual protection. It stands to reason. I will give you specific instances now how that understanding was violated and therefore Tibet broke off that relationship, and I will straight away come to that chapter of Tibetan history.

The Chinese do not talk of sovereignty or suzerainty but ownership. By that argument the Chinese try to prove the Dalai Lama having been under their diktat all the time. The Manchu conquest of China represented an external force coming into China and establishing an empire, which the Chinese now call their own, but it was the Manchu empire from outside China and Harbin was its capital which was also outside China at that time. One of the most important dynasties after the 12th century and before the Manchu was the Ming dynasty. Throughout the Ming

dynasty there is no evidence during the 15th and 16th century of the Dalai Lama having accepted the invitation of the Chinese either on the coronation or even for a spiritual sermon. Even for the establishment of the Buddhist monastery in the Ming capital, he refused to go to Nanking, for example, and that is one point I would like to highlight before I come to the 20th century. In the interim the Manchus were alien to both China and Tibet.

Even the special relationship, the Cho-Yon relationship came to a complete end in 1908. If it were thriving until 1950 the Chinese could have some reason to quote it but it came to an end well before that. It is a point of history we must all know. The special relationship between the Manchu emperors and the Dalai Lama in the form of the Cho-Yon relationship came to a complete end. The terminal end of this relationship came in the early years of the 20th century, just as the century started.

In 1908 the Manchu troops invaded Tibet. Manchus were invading left and right north and south until they came to a point that they invaded Tibet. After all the communist regime is not the first regime to invade Tibet. In 1908 there was no appeal from the Tibetan king, that is the Dalai Lama, for the Manchus to come in to protect him or his kingdom from anybody. They came on their own. What was the Manchu objective? The Manchu objective was to remove the British influence from Tibet which had been growing constantly in the last two decades and to depose the Dalai Lama. The Manchu dynasty was overthrown by the Chinese themselves, it is called an act of independence by the Chinese. I mean China became independent from the foreign rule with the fall of the Manchu dynasty. How can they own the Manchu dynasty? But Tibet claimed independence of the Manchus before the Chinese claimed their independence of the Manchu, and I am bringing that point in.

The Manchu objective was

- (1) to remove increasing British influence in Tibet and
- (2) to remove the Dalai Lama from the throne in Tibet. The Dalai Lama responded very strongly by terminating the Cho-Yon relationship formally because the disciple had attacked his spiritual master violating its very foundations and the Dalai Lama would have done this anytime the Chinese attacked Tibet, anytime the Manchus attacked, anytime the Mongols attacked Tibet, such an act would be the end of that relationship.

That happened in 1908 and he ended the Cho-Yon relationship. The Manchu empire collapsed three years later. It was a curse of the Dalai Lama. The Manchu empire collapsed in 1911, three years after the Manchu attack of Tibet and the Manchu troops surrendered to the Tibetan forces soon thereafter. Under the three point agreement of 1912 between Tibet and China, Manchus agreed to withdraw all imperial troops from Tibet.

On 14th February 1913 the Dalai Lama issued a proclamation reaffirming the independence of Tibet. The independent status is reached in 1908. It was confirmed when the forces of Tibet and China clashed. It is reaffirmed under an agreement between the two when the Manchus agreed to the withdrawal of every Manchu soldier from Tibet.

NARESH MATHUR: That Cho-Yon did not impinge upon the sovereignty, then it may not be correct to say that independence was attained in 1908. It is merely the revocation of a relationship which had nothing to do with sovereignty.

L.L. MEHROTRA: But independence came because Manchu empire collapsed and the Dalai Lama said we are independent altogether.

NARESH MATHUR: No, as a matter of fact in 1908 the Chinese Manchu general, marched and conquered much of Tibet. This is one thing which should be taken note of. Chinese often refer to this conquest.

L.L. MEHROTRA: But all his forces were sent back. There is a document of surrender and the agreement of 1912. The person who was posing himself to be the conqueror of Tibet signed an agreement for the withdrawal of every single Manchu soldier and the Tibetans will have nothing to do with him until that was achieved and they saw to it that it was achieved.

J.M. MUKHI: What you are saying is that the inauguration of independence was not with the severing of the *guru-chela* relationship in 1908. It was already independent and this was another incident, a separate one and the proclamation only confirmed the existing fact.

L.L. MEHROTRA: Now in terms of assertion of independence, the relevance of 1908 is crucial. It lies in the very fact that the Chinese talk of the ownership of Tibet on the basis of the Cho-Yon relationship and that relationship definitively came to an end in 1908. They say that this relationship put Tibet in a state of dependency over China. If that relationship ends or is revoked and the other party is not in a position to enforce it again, that is the end of the matter. One, a spiritual relationship is not based on physical force. Second, even if it were so and the dominant partner ceases to have the resources to enforce it and when it tries to enforce it, it cannot, then it has fallen by the way side on that day the Dalai Lama revoked it. It is highly relevant when you examine the question of the Tibetan assertion of its independence. It is the Chinese who are saying that the dependency of Tibet over China goes back to the date when this nephew-uncle relationship started in 821/823. So that is why the importance of that particular event in 1908.

As a matter of convenience the British coined this concept of suzerainty. A fully independent status of Tibet was an anathema to Britain. It was evincing keen interest in trade with Tibet as an imperial power and was afraid of Russian infiltration and they wanted the Chinese to play a role in the containment of that. In order to exclude the Russian presence from Tibet they devised the fiction of China's suzerainty over Tibet. Unable to communicate effectively with Tibet they approached the Manchu court for assistance forcing Tibet to co-operate with them. But did Tibet co-operate with them? That is the critical issue. The Tibetans rejected the treaties of 1890 and 1893 that Britain had signed with China on trade with Tibet. Tibetans had nothing to do with it. These treaties were a marriage of convenience between Britain and China but since they did not suit Tibet, the latter felt quite free to reject them. A non sovereign power does not reject treaties. It does not come into play. But the Tibetans rejected them outright and told both of them that these treaties were not applicable to Tibet. In 1903 when Britain invaded Tibet and the Younghusband expedition came, the Manchus did not come to Tibet's rescue. 1903 the 'Protector' under the disciple-priest relationship, the teacher-taught relationship refused to come to the rescue and they had the cheek to come in and assert their control in 1908 which they could not. In 1903 when Young husband was leading his expedition and reaching Lhasa and was on the doors, the Manchu emperor did not undertake his responsibility under the Cho-Yon relationship if it was a relationship of dependency to give the Dalai Lama protection. They did not come to Tibet's rescue and disclaimed any responsibility for the actions of the Tibetans.

If China was the suzerain power how will they not take responsibility for the behaviour of a constituent part of China? And the Manchus said they were not responsible for the Tibetan behaviour of non-cooperation with the British preceding Younghusband's attack in 1903.

NARESH MATHUR: There is a reason for that, you don't have to look too far. In 1904 you have a totally prostrate China. In 1899 Siberia is lost, in 1900 China has been carved up by the French, the Germans, the Americans and the British.

L.L. MEHROTRA: Therefore it could not have exercised control over Tibet. If the Cho Yon relationship is treated as a legal relationship between Tibet and China, then it did not execute its legal obligations under that, even with regard to the Dogras. There are many instances. In the interplay of the British and Chinese imperialism and Russian — this is a very pertinent point — in 1903 what happened?

J.M. MUKHI: You are underlining the motivation of the British also.

L.L. MEHROTRA: Underlying the inability of the Chinese also.

J.M. MUKHI: Also the motivation of the British in setting up the suzerainty theory.

L.L. MEHROTRA: Yes. The war of 1903 ended in a historical treaty between Britain and Tibet with Chinese nowhere in the picture.

NARESH MATHUR: They were in Lhasa. They were not witnesses, but the Chinese were in Lhasa and they sat through but they did not sign.

L.L. MEHROTRA: They did not sign and did not say they disclaimed it because they were not signing it. The Lhasa Convention, presupposes the unrestricted sovereignty of Tibet, duly acknowledged by the British imperial power as a state competent to sign a treaty. If that is international law, what the significance of the 1903 treaty in modern jurisprudence. On the Lhasa Convention, the 1903 documents in the India Office contain a very revealing statement of Lord Curzon. He said: "China's sovereignty over Tibet is a constitutional fiction" This is an Englishman saying this, a Governor General of India, one of the stars of British imperialism. I don't have to say it, the Tibetans don't have to say it. One single sentence is enough to prove their status. Later on the story is different. May I continue with that quotation.

China's sovereignty over Tibet is a constitutional fiction — a political affectation which has only been maintained because of its convenience to the two parties. As a matter of fact the two Chinese (i.e. Manchu Ambans), at Lhasa are there not as Viceroys but as ambassadors.

R.P. DHOKALIA: What does this *Amban* mean?

S. RINPOCHE: *Amban* means representative, *Arthsadak* or a liaison officer.

J.M. MUKHI: Very distinct from the British resident of the native Indian States.

L.L. MEHROTRA: In 1947 when India became independent, its recognition of Tibet as an independent state was more than evident as the following communication of the Indian government directly to the Tibetan Foreign Office would show:

The Government of India will be glad to have an assurance that it is the intention of the Government of Tibet to continue relationship on the existing basis until new arrangements are reached on matters that either party may wish to take up. This is the procedure adopted by all other countries with which India inherited treaty relations from His Majesty's Government.

J.M. MUKHI: Can the files of the political and foreign departments between 1935 and 1947 which are in the National Archives of India be available to scholars?

L.L. MEHROTRA: Some of them are in the archives already, some of them have not been released. Some of them are in the India Office Library in London.

KARMA CHOEPHEL: The British used to maintain three records, one is at Calcutta. We sent somebody to Calcutta and they say they have it but they don't know where.

J.M. MUKHI: I think instructions were issued and all that was frozen at some point of time. I want to know that the third record which is in the India Office Library is a complete record or not.

NARESH MATHUR: That is more or less a complete record.

L.L. MEHROTRA: Between the fall of the Manchu empire in 1911 and the occupation of Tibet by China in 1950, forcing the Dalai Lama to leave his country in 1959, Tibet functioned as a totally independent international entity. The International Commission of Jurists which examined this subject through its legal inquiry committee of Tibet summarised its conclusion on the question of Tibet's status as following.

Tibet demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In 1950 there was a people and a territory and government that functioned in that territory conducting its own domestic affairs free from any outside authority. This is the legal requirements. From 1913 to 1950 foreign relations were conducted exclusively by the government of Tibet and countries with whom Tibet had foreign relations are shown by official documents to have treated Tibet as in practice as an independent.

The entry of Chinese forces into Tibet in 1949 was in violation of the sovereignty and territorial integrity of an independent state. The Seventeen-point Agreement of 1951 which follows was signed in Beijing by the Tibetan delegation under duress. They did not have the plenipotentiary powers to do so, nor the seal of the Dalai Lama to be affixed on the document, and the Government of Tibet was not informed in advance of the contents of the document signed. This is fantastic. The Dalai Lama refuted the agreement at the first opportunity at Tezpur, that is after he walked into freedom in 1959 after his flight from Tibet. Even if the Tibetan objection to the validity of 1951 agreement are set aside, the fact that upon the establishment of the Peoples Republic of China Tibet was invited to join the new republic prove that Tibet was not part of that republic. It was invited to join and Tibet was not a part of that republic and would need an act of self-determination to join it. That act has not yet taken place.

QUESTION: Could you explain India's position on Tibet vis-à-vis China? Was it not in succession to British position on Tibet?

L.L. MEHROTRA: Our position as a successory state arose from the relationship that India had with the British at that time. We avoided the answer about what relationship Tibet had with the British Imperial Government and said it was for the British to define that. The British confirmed that they treated it all along as an autonomous state under China's suzerainty. Nehru was guided by that consideration at that point of time. Secondly, the strategic considerations on the subject were very vital, and it would be wrong to suggest that Prime Minister Nehru was not conscious of them.

By the year 1954 when the opportunity came to pronounce once again India's position on Tibet two things had happened. One in 1951 the Sino Tibetan agreement had been signed and was in operation. The Dalai Lama was still in Lhasa trying to adjust himself to the best of his ability to the provisions of the Agreement and making the best out of a very bad scenario. He was not trying to repudiate his relationship with the Chinese completely because he did not have the military instruments to defy the Chinese position. The PLA presence of 1949 was very different from the Manchu presence of 1908. The PLA was the most well-trained guerrilla armed force of Asia at that point of time which had won victory after victory in its marches and had thrown the Kuomintang out and the Dalai Lama would have known the consequences that would follow if he sought out a military solution. He sought through letters and through his representatives including Mr. Shakapa who were sent to Delhi in the year 1950 for reversal of the Chinese invasion. He sought recognition as an independent state and the protection of the United Nations. But the United Nations did not move in. There was not a single country forthcoming despite the fact that all of them were angry with China and they did not come out with clear statements that the sovereignty of Tibet had been breached. So this was one factor.

Then in 1954 what had happened when Nehru formally declared that Tibet was a region of China. He used to talk about it earlier in references here and there. In the 1954 Trade Agreement on Tibet he confirmed that Tibet was a region of China. The strategic scenario in India in the Indian sub-continent had changed radically. Pakistan had become a member of the western alliance. It was already in SEATO and CENTO. The American commitment to protect Pakistan was complete and total. The treaty of defence between the US and Pakistan had come into being. It was a pact reached with Pakistan in the early 1950s. The issue of Kashmir was on the boil once again. Sheikh Abdullah was changing his course. Americans were persuading the leaders of Kashmir to think in terms of Kashmiri independence. It would have been too much for India with its possibilities as an infant democracy to take on China on the North and Pakistan allied to the West, on its eastern and on the western Tibet at the same time. Therefore knowing that the British had already

told the Americans and the UN and specially India that they had treated Tibet as nothing more than an autonomous region of China, but always adding that they had insisted that the Tibetan autonomy must be maintained. Nehru decided to go along with that position. That is British diplomacy. In their view the Chinese had exercised suzerainty over Tibet, so Tibet had been an autonomous area and the Chinese must respect that too. Prime Minister Nehru took the same position.

As far as the legitimacy of Chinese authority over Tibet is concerned, the historical records, that have been placed before you and which have so ably been supplemented by Prof. Rinpoche,* leave us in no doubt that the Chinese authority over Tibet either did not prevail, or if it prevailed was well before the latest phase of events in Tibet, and that the Chinese have only taken pages from the book of history that would conveniently suit them. Even then the Chinese have not been able to exploit them in a manner that would carry conviction as to the legitimacy of their authority over Tibet.

The biggest lacunae in the Chinese argument is that the points that they make in their favour could be used with equal fervour by the Tibetans against them. We cannot allow the Chinese to be so selective about history and episodes from history that would present only a one sided picture.

In political terms it is quite obvious that when the Chinese forces came and occupied parts of Tibet and the eight-pronged attack of Tibet started from the east in the October 1949 it was an act of invasion of a territory that did not belong to them. Their title ownership of Tibet had suffered a conclusive breach well before that.

The legal implications are also very clear. There is a manner in which vassal states normally function, and the manner in which Tibet functioned did not reflect or represent that status. Tibet functioned with full powers of treaty-making, and these powers were exercised, and were not theoretical, and they exercised them with the biggest of the powers in the world, including Great Britain which held the largest empire at that time and was present in South Asia as a symbol of global authority.

Moreover, during the same period Tibet exercised other symbols of sovereignty, like sending its envoys with its own passports, sending delegations under its own authority and rejecting Chinese requests to even cross through their territory. When Kublai Khan wanted to invade Nepal and India, both of which were connected with the life and story of Buddha, the Dalai Lama felt that would be an outrage against sacred India and its land, and therefore did not permit any action through his territory. This is not a vassal status. These examples can be multiplied.

The Chinese wanted Tibet to join them in their war against Japan. This is recent history. Tibet took no part and refused to take part. This is not a provincial or a governed or vassal status.

* See also post, Part Five, The Historical Perspective.

J.M. MUKHI: I am under the impression that the Tibetan flag fluttered in New Delhi in 1946, itself. Later on it was removed. Dalai Lama came himself.

L.L. MEHROTRA: Later on when it was removed, many things have happened since then.

The fact of the matter is whenever the Dalai Lama went from Tibet to any part of the world, he was flying his flag. Now if the Government of India had a certain sensitivity about it then and would not allow him to fly the flag, because they had accepted him as a cultural head and not as a political head then, that is a different point altogether. It does not at all detract from the status of Tibet as an independent nation.

He may be a refugee in my country entirely on my own terms, but it did not define his status prior to that event. It is altogether a different matter. One can restrict His Holiness' movement even in exile. You can't say that he had ceased to be the head of Tibet in the year 1949. These are two different issues. The conditions under which we have the Dalai Lama here are a matter of negotiations between His Holiness the Dalai Lama and the Government of India and they will continue to change. He came with the flag. He is not flying that flag and he may fly the flag tomorrow, but it is neither here or there in regard to either his status in Tibet or the status of his territory *vis a vis* China.

NARESH MATHUR: This happened during the Asian Relations Conference in March 1947. There at the beginning of the Conference the Tibetan flag was flying. Was it removed at some stage? The flag was removed. At the end of the conference Sarojini Naidu called the Tibetans and said "we have done as much as we could trying to contain the Chinese objection. Now we have done what we can, we have recognised the Tibetan community"

J.M. MUKHI: There was no such thing. They were dealing with the Kuomintang at that time I was asking where was the scope for Sarojini Naidu to bring about rapprochement.

L.L. MEHROTRA: March 1947 is a point in time when India is not independent. We were instrumental in bringing about the Asian Relations Conference on a territory which is India but part of British empire. An Interim government of India does not have the same status as an independent state of India. The Indian state assumed the sovereign status on 15th August 1947. The Governor-General of India was still the full plenipotentiary of India, by the British Act as an appointee of the crown of England. Any practice that we may have followed at the time of Asian conference cannot be cited as a precedence. It would be a measure of the same old British sensitivity to the Chinese view point. We would have been very inclined to have

the Tibetans fly the flag, but Governor-General could have said this was not permissible because the British very openly did not recognise Tibetan sovereignty. And that is the snag. I mean the matter was not debated at the United Nations because the British said Tibet was not an independent territory and we should avoid taking a stand on this subject.

NARESH MATHUR: I would like to invite your attention to the supplementary protocol of the Shimla Agreement. When China did not sign or ratify the convention, then a supplementary protocol was entered into between British India and Tibet. This supplementary protocol very clearly stated that if China were not to ratify or sign the Shimla agreement then Britain would not concede China's suzerainty over Tibet. Second that Britain could recognise Tibet's sovereignty. Britain would recognise Tibet's sovereignty. Now this is the effect of the supplementary protocol. If China does not ratify then Tibet is sovereign and even their minimal suzerainty, that fiction, is not going to be attested to by anybody. Officially on record this should be Britain's position because there is no deviation or change in its position right down to independence, 1947.

J.M. MUKHI: I am inclined to agree with you, because I have also seen that protocol, the Tibetan representatives and the British representatives agreed amongst themselves that this would have effect on both the items autonomy and nominal suzerainty, this formula would take effect only if the Chinese signed, not otherwise. Not otherwise was the position that Tibet was considered to be an equal partner with China and not a subservient. Now that is there but what I think Mr. Mehrotra is referring to is the expedient position Britain started adopting during the Second World War and therefore on that there was some ambiguity and the British continued to ignore the Shimla protocol.

L.L. MEHROTRA: And the British therefore in March 1947 did not allow the Tibetan flag to be flown. That was the position, we were not independent. British were adopting a mechanistic attitude. British were not being true to form, British were taking a position of convenience between two imperial authorities. British were ignoring the Tibetan interest and the actual status of Tibet as it had obtained. The British continued to do so, at home in the exposition of Tibet's position in the parliament of England as well as outside.

I have a document here, Foreign Affairs Committee Report, 1994, ordered by the House of Commons to be printed on 23rd March 1994. House of Commons, Relations between the United Kingdom and China. That committee also refused to say that Tibet has an independent status. What we are trying to contend with is that Britain ignored the fact, for its own convenience, that Tibet had become independent.

NARESH MATHUR: Expediency I understand, but as late as 1937 in the treaty and some other agreements, British forgot about the McMahon Line from 1914 to 1937. In 1937 they woke up to the fact that there is a McMahon Line. Then they forged books volume 12 which was released in 1929, the McMahon Line was drawn in 1937. All the books were repurchased back from the libraries except Harvard, and few libraries which refused to return the books. I want to draw a distinction between politics and expediency in effect of treaties because till the treaty is officially abrogated it holds, its safe. Acheson's volume 12 was forged and they printed the McMahon Line and then sent it back to wherever they belonged, but some libraries have this book

S. RINPOCHE: There is no proof that in March 1947 the Tibetan flag was removed. I don't confirm this. There is proof that the flag was flown, there is no proof of it being removed.

J.M. MUKHI: My recollection is that I have read it in a book that it flew. There is no mention that it was removed. Therefore I am asking what was your source.

NARESH MATHUR : My source is in Tibetan but I will have to confirm it.

KARMA CHOEPHEL : I met some one few years ago who attended the Asian Relations Conference. According to him the flag flew. They sang the National Anthem of Tibet like any other country was represented.

S. RINPOCHE: On Shimla Agreement, in 1939 objection of China with Tibet is on the McMahon Line and not India-Tibet dispute. In 1939 China put out all the points on which it disagreed.

L.L. MEHROTRA: Until it is historically confirmed that the flag was removed we can proceed on the basis that the flag was flown.

What was the moral aspect? When India becomes independent, China sees India dealing with Tibet directly. I referred earlier to the message sent from India to Tibet in 1947 where we treated Tibet as a country and said like other neighbours of India, arrangements between the two countries would remain in place. That was the motive behind that letter. The Chinese historically always maintained Tibet as a part of China, even when empires were liquidated, Kuomintang came and went. They never yielded ground on this issue and they always believed that Tibet was a part of China.

The Indian Government received an assurance from the Chinese before we made a statement in the United Nations. Nehru said, at that time, that: "I believe that India, Tibet and China can resolve the issue of Tibet to the satisfaction of all three

and a debate therefore at the United Nations may not be necessary." Dalai Lama had sent a request officially in 1950, to the United Nations for this matter to be discussed. He said I have no help I can't go to any other quarter. In violation of that assurance, the Chinese moved their forces. When they moved their forces how did India react. I will read out two statements. We in India considered that act immoral.

J.M. MUKHI: May I read out this bit from Renault Magrath's book
On the eve of India's independence Pandit Jawaharlal Nehru and the Congress party of India organised the Asian Relations Conference in March 1947. The Tibetan Government accepted an invitation to send a delegation to New Delhi as did the governments of other Asian States. The National flag of Tibet was flown alongside those of other participating countries including China and in every respect Tibet was treated in the same way as other independent Asian States. In fact China's delegates lodged a protest against this official recognition of the Tibetan delegation and even demanded the removal of a map of Asia displayed in the conference which showed Tibet as a country politically separate from China. But the spirit of the conference was expressed in Nehru's opening speech. He said "In this conference there are no leaders and no followers, all countries of Asia have to meet together on an equal basis in a common task and endeavour.....

S. RINPOCHE: I remember that the map was removed, because of dispute about the demarcation in the map of China-Tibet border. It was the map that was removed not the flag.

L.L. MEHROTRA: I would read four paragraphs to you from His Holiness the Dalai Lama:

On November 7th in an appeal dated 27th day of the 9th month of the iron tiger year which I cabled on November 11th 1950 to the UNO from Kalimpong, the Tibetan Kasa Gangsongchu protested against the Chinese invasion which they called a blatant act of aggression. Their appeal to the UN stated in part the armed invasion of Tibet for the incorporation of Tibet into communist china through sheer physical force is a clear case of aggression. As long as the people of Tibet are compelled by force to become a part of China against their will and consent the present invasion of Tibet will be the grossest instance of the violation of the weak by the strong. We therefore appeal through you to the nations of the world to intercede on our behalf and restrain Chinese aggression."

"El Salvador formally raised the Tibetan question before the Secretary-

General but following the Indian delegation's assertion that a peaceful solution, mutually advantageous to Tibet, China and India could be reached without a discussion in the United Nations and was on the assertion of Chinese that we will come to a peaceful solution, the steering committee of the general assembly agreed to postpone the Tibetan appeal. Although Great Britain had good relations with Tibet and concluded treaties with Tibet as a sovereign power, a clear mark of her recognition of Tibet's independence, the British delegate asserted that the legal position of Tibet was not quite clear. This was a bitter disappointment to the Tibetans because the British were well informed and clear about the Tibetan situation. Three days after the British foreign under secretary's statement in the House of Commons, Indian Deputy Prime Ministers and Minister of Home Affairs, Sardar Vallabhai Patel said in New Delhi.

'The use of force against the traditionally peace loving Tibetan people was unjustified. No other country in world is as peace loving as Tibet.'

The Chinese Government did not follow India's advice to settle the Tibetan issue peacefully. They marched their army into Tibet and explained their action by talking of foreign interests intriguing in Tibet against China, but their statement was unfounded. So morally, they are in the wrong. Again Rajendra Prasad ji in his address to the Indian Parliament on November 14, 1949, drafted by the government of India, I mean it was Nehru's draft, shows how strongly he felt on the moral issue.

My Government has been consistently following a policy of friendship with our great neighbour country China. It was a matter of deep regret to us therefore, that the Chinese government should have undertaken military operations in Tibet, when the way of peaceful negotiations was open to them. Tibet is not only a neighbour of India, but has had close cultural and other ties with us for ages past. India must, therefore necessarily concern herself with what happens in Tibet, and hopes that the autonomy of this peaceful country will be preserved.

On the moral question, therefore there can't be any doubt — the invasion of Tibet was an act of aggression and an act in violation of the sovereignty and territorial integrity of an independent nation.

NARESH MATHUR: Can I intervene on the legal part of it? There is one very important treaty dealing with the legal aspect of their legitimacy, the Treaty of Adhesion of 1906. In 1904 the Chinese were in Lhasa, they didn't participate in this treaty. Britain wanted China to ratify this treaty. In 1906 they made them ratify this treaty. As a matter of fact the Sino-British treaty, 1906 Treaty of Adhesion, whereby China recognised and gave full effect to the Younghusband. If this 1906

Treaty of Adhesion under which China is recognising that treaty in which Great Britain entered into with Tibet in 1904, the existence of that is very important.

L.L. MEHROTRA : The legal point is not recognition of that treaty but ratification of that treaty. If China is ratifying that treaty, then China becomes the suzerain power. If the ratification by China is required for the treaty to take effect, then China is the Suzerain power. That is what the British wanted to suggest. But if it simply recognised that treaty, then it is the recognition of an independent act on the part of Tibet. Therefore ratification by China weakens Tibet's case.

S.D. MUNI: I have one question and one comment. The question is on Tibet's membership of the United Nations. Why it did not seek or if it sought what happened? The United Nations had come into existence much before this conflict had started. And it would have been their claim. It is possible that the Security Council would not grant to many other countries including Sri Lanka and they did much later in 1954; 1956. Even Nepal was not granted membership. Therefore, Tibet should have put its claim to membership, If not, why not?

The comment is about the Indian position. And I am much worried and confused. I had different ideas but lot of questions have arisen out of factual state. In fact I find the Indian position very inconsistent in this respect.

To begin with in 1947, there is a reference to India and Tibet having the ambassadorial relationship which is absolutely fitting. Also in 1947 India tried to invite Tibet to the Asian Relations Conference not having the flag, and Sarojini Naidu saying that "helping Tibet to be recognised as an independent member of the Asian Community". Now from there you have just now given us the statement of Dr. Rajendra Prasad. In 1950 he uses two words which I have noted, you are talking of the military operations not aggression. There is a lot of difference between aggression and operation. If you are not using 'aggression' then it is not a question of two independent countries, if you are using 'operation', then it is operation within a country. That is the meaning I am deriving.

Secondly, the term used is 'autonomy' not 'independence'. Why this change took place? Obviously there are various explanations in my mind and I can connect this up to 1954 which you mentioned yesterday.

One explanation is that we were very heavily guided by the British records and British advice. This is one explanation, but then we had probably ignored our own commitments of March 1947, and later on. Now this inconsistency I am amazed, that nobody in the Indian Parliament pointed out to Nehru. Nehru to a very large extent was sensitive. He was also Machiavellian in many ways, but he was sensitive to being exposed to the charge of inconsistency or wobbling around the fact. If the issue was brought out in the Parliament I am sure he would have done something else to rationalise, justify or change this position. I am not very sure. He might have

cracked joke, he might not have cracked a joke. We do not know what he would have done.

Then again in 1954 we went much ahead to woo and accommodate the Chinese position and there were various other considerations. Kashmir, and the treaty with US Pakistan Agreement was mentioned. Sheikh Abdullah's hobnobbing with Americans was mentioned, rightly so, and vice-versa and Sheikh Abdullah was arrested in 1953. Therefore, here was a situation where to Nehru's perception, a sort of boiling pot in Asia, Tibet on one hand and Kashmir on the other. He thought there might have been the need to carry the Chinese around.

J.M. MUKHI: Prof. Muni, you are travelling beyond the historical aspect, you are travelling beyond 1950. You have made your point, that the position up to 1950, the Indian position was ambivalent and not clear. Now in regard to what has been stated as being Prime Minister Nehru's speech, because Dr. Rajendra Prasad was the President of India and this might have been written by the Prime Minister. A long detailed letter written by Sardar Patel does reflect something more than what would have been in the Parliament because it was detailed and it was from the Home Minister, the Deputy Prime Minister, therefore that letter deserves some attention. In that letter there is question, clearly of invasion and not of military operations. The debate had not ended, and that is very clear from that letter.

S.D. MUNI: May I beg to differ here, because there were many points on foreign policy on which Patel disagreed with Nehru. It is Nehru's policy and certainly the Presidential Statement has a much greater legality in terms of assessing India's position, rather than the letter Sardar Patel is writing within it.

J.M. MUKHI: All of us agree with you hundred percent that the official Indian position expressed by Pandit Nehru up to 1950 was ambivalent to the extreme degree. He was persuaded as I pointed out yesterday by a note written by the Historical Division as to the status of Tibet and that note was based on an expedient council in parliament by Anthony Eden in 1942. China was an ally and Tibet would not be drawn into the war therefore he wanted to talk about the suzerainty of China over Tibet. Now that was the answer that he gave and we took it as the real status of Tibet. Now that was most unfortunate but that is there, that is the weakness of the Indian government and ambivalence is quite clear.

S.D. MUNI: I am sorry, I am not blaming anyone here for ambivalence. I am talking of India's position and may I reiterate, that Nehru would not be simply guarded by under secretary of the Historical Division making a note with reference to something else, until Nehru had gone into the strategic significance and aspects of that particular point. Therefore please don't treat this as a kind of benign misunderstanding of the

situation on the basis, not deliberate, I would say, it was calculated, well considered position.

S RINPOCHE: Invasion is the right word used in the text and not aggression, in both the notes.

L.L. MEHROTRA: Invasion is not proved when you send the forces. If I send my forces into Meghalaya or Assam, it is not an invasion. Invasion in this context would have the connotation of aggression.

NARESH MATHUR: There are two questions.

1. Prof. Rinpoche in your statement why do you call the Manchurian emperor the Chinese Emperor. If he is Manchurian, he comes from Manchuria, he adds China to his trophy, how does he become a Chinese emperor? I don't understand this.
2. What was this establishment of the Yuan dynasty by Kublai Khan. It was again that he becomes the Chinese emperor. Now this confusion of the Mongolian becoming Chinese emperor and the Manchurian becoming Chinese emperor, if you could just clarify this, how is he a Chinese emperor?

If I may add just one more wonder whether we Indians here would consider the Mughal's Indian. I am just wondering because unquestionably these people got synthesised you know, one aspect of the relationship between Tibet and Mongolia and the Chinese is civilizational aspect which should be considered is that the Mongolians and also some Tibetans, not all, were nomadic also which added to their mobility and the fact the Mongols were able to go down to Venice and in the similar way the Mongols. The Chinese were always rice-eating plain *wallahs* like the *dhotiwallahas*. Of course the culture is much older, the Ching dynasty had systems of government, historiography, etc., But what I am suggesting is that these invaders, these horsemen, they got synthesised, even the Manchurians got synthesised but does that make them Chinese Emperors. I am just wondering the fact of culturalisation does that make a change analytic.

S. RINPOCHE: Your question is very important. For a number of years Chinese schools spread a belief in Asia through falsification and misinformation about the principles governing their Middle Kingdom. They also propagated that the life-style and grandeur of emperors could be maintained only in China, not in Mongolia or Manchuria. Based on this interpretation they did not like to argue that China had been defeated and had become part of Mongolia or Manchurian empire, instead they liked to interpret it as Mongolians or Manchurians becoming emperors of China.

Because of this belief in order to have effective legitimate control the Mongolian and Manchurian emperors also preferred to rule from the Chinese capital and not from Mongolia or Manchuria.

I would also like to tell you that at that time countries around China were not aware of their political claims and rights governing inter-state relations. This is one of the reasons why China is able to lay her claim on Tibet basing itself on certain historical documents which they possess. But it would be wrong to presume that all countries at that time were aware of modern political principles governing inter-state relations. A number of actions could have been taken unknowingly.

R.P. DHOKALIA: First, the Dalai Lama and the Panchen Lama were installed in office by some Chinese dignitary, commissioner of Tibetan affairs. When was this and how did it happen that Panchen Lama and Dalai Lama were installed in office officially by the Chinese representatives.

Secondly, why did the Tibetans representatives participate in the new constitution of 1948? It is a fact and if Tibet was independent how was it concerned with drafting of the constitution.

Tibetan representatives were members of National Assembly of China, in what capacity and how?

S. RINPOCHE: During the tenure of Seventh Dalai Lama, out of four cabinet ministers of Tibet, there existed a group of three against one, and there was a fight among these two group which continued for two to three months. Pholha, a lone dissident asked China for military help. However the military help from China arrived late, and all of them compromised and reconciled their differences. Members of the three-party group disbanded their armies. In those days the concept of army under unitary command was not there, whenever the need arose the people were conscripted and an army was raised. Despite compromise Pholha did not disperse his army. When the Chinese army reached Tibet they were joined by the lone minister and his army and they defeated the group of three ministers. Pholha took a very wrong step and took over complete power. He planned to liquidate the three ministers following their imprisonment. The Abbots of the three monasteries, who played a major role in the politics of Tibet advised this minister not to give the death penalty to the three ex-ministers and instead life imprisonment or any other form of punishment. Pholha disregarded the advise and voluntarily gave the Chinese army the right to decide the fate of the three ministers. The Commander-in-Chief of the Chinese army constituted a court, tried the ministers according to the Chinese law, and beheaded them.

Since then Chinese interference started and they began interference in Tibetan affairs Pholha's reign was good from the spiritual point of view but was very bad politically because he continued to surrender politically to the Chinese authority.

Whatever he couldn't manage he asked the Chinese to perform. He gave the impression internally that he was dictating orders about awarding death penalties but politically he accepted Chinese intervention. This was followed by a revolt in which the Chinese representatives were killed and the Chinese intervention ended with the direct rule by the seventh Dalai Lama.

The eighth Dalai Lama ruled indirectly through his agents. Chinese intervention in Tibetan affairs continued for some time. Traditionally during the reincarnation of the Dalai Lama the Chinese Amban used to play the role of picking up a name from a golden urn. It is incorrect to say that the Dalai Lama is chosen by the permission and acceptance of the Chinese rulers. To choose a new Dalai Lama, the names of the candidates are written on small slips of paper, put into a golden urn, taken to Magadh in Bihar and placed in front of two statues a golden statue of Buddha which was brought from China in the 7th century and another from Nepal. The Chinese Amban used to mix all the slips with a golden chop sticks and pick up one slip. The person whose name would be picked up was considered the reincarnation of the previous Dalai Lama. The remaining candidates were given the title of Rinpoche and given due respect. This is how the Dalai Lama is selected.

It is incorrect for the Chinese to claim that the Dalai Lama is selected with permission granted by the Chinese ruler. The Chinese Amban used to participate because the Tibetans also considered the Chinese ruler spiritually high as reincarnation of Manjushree. An official representative of the Manjushree helping in the process of selection of the Dalai Lama meant that, firstly, the selection would be impartial; secondly, it would be recognised; and thirdly, there would be no need to convince the Chinese again since the selection would be done in their presence. This was continued during selection of eighth to the twelfth Dalai Lama. All of them passed away at early ages. At the time of the selection of thirteenth Dalai Lama, we Tibetans discontinued this practice of lottery system.

It is absurd for the Chinese to claim that fourteenth Dalai Lama was selected by the Chinese representative. The Chinese representatives arrived in Tibet. Fourteen days after the reincarnation the Dalai Lama and had audience with the Dalai Lama only after two months. The audience was granted after a recommendation was given. After the audience with the Dalai Lama they sent a telegram to China that they have approved the selection of the fourteenth Dalai Lama. It was only a meeting of presentation of gifts and credentials/like Ambassadors.

ALI ASHRAF: Tibetan representatives did not participate in the constitution making. There is no question of Tibetans participating in the framing of Chinese Constitution. China has always considered Tibet as a minority nationality and they always kept a representative. Since it is a long history we cannot clear all the confusion in one stroke.

Chinese invasion of Tibet did not start in 1949. Their imperialistic and expansionist policy started much before 1949. In 200 years it slowly captured areas of Tibet. The Chinese had the concept of inner Tibet and outer Tibet. We should be clear about this. So when the Chinese talk about Tibet are they talking about the inner Tibet or outer Tibet? Even today in the Taiwanese Parliament there is a Tibetan M.P., and a Mongolian M.P. They are nominated.

J.M. MUKHI: They are not their representatives. They are nominated. It is a camouflage, their own doing.

L.L. MEHROTRA: It is replica of Chiang Kai-shek's cabinet and parliament.

S. RINPOCHE: All information or facts which the Chinese are giving is neither given by the consent of the Tibetan people or by the mandate of the Tibetan people. Chiang Kai-shek constitution-making forces had used the services of Rishishirba a famous intellectual who was in the pay role of the Chiang Kai-shek's government and translated the constitution in Tibetan. Later it is said, he participated in the constitution making process. But he was only translator for the Chinese constitution into Tibetan language.

L.L. MEHROTRA: The significant point is whether he was a representative of the Dalai Lama or not.

NARESH MATHUR: This is a very interesting and important question. It is a point of transition. The Chinese see the world in two categories Wy-Phang, Ny-Phang. One of them means internal territory, the other external. There is a lot of distortion by the Han historians. Even when the British sought an audience with the emperor they said the British came to pay tributes to them. Chowa Khan captured substantial Tibetan territory in 1908-1910 campaign. Chinese position is that every square inch was under the dynastic control of China. As a matter of fact some would say Cheng Dung which was the biggest ever Chinese empire which included Korea, Vietnam, parts of Thailand from 1732-1792 consider all these countries as part of China. They want all of this back.

The question here really is that when we get into the exercise of modern constitution-making, as the Republicans were attempting, do you transpose these categories of Wy-Fang and Ny-Phang, in references to the case of Tibet? Tibet is represented by a black stripe in the flag of the Republicans. The republican flag has five stripes for five nationalities. There is edge enough. Today India is being asked, "what proof do you have, about of Kashmir" Ajit Bhattacharjea has extensively written about the instrument of accession. Why is no demand made from the Chinese to demonstrate the instrument of accession. Where is the concurrence of Tibet to be

part of Republican state or PRC. PRC constitution, the 1949 constitution, where is the Tibetan concurrence?

S. RINPOCHE: That is what I said. When the constitution-making process was going on the Chinese worked out its relations with the inner Tibet and question of the MacMahon line was raised, and we cannot overlook the historical fact we have to take it into account. They considered this Tibet to be the actual Tibet and provision 120 in the Chiang Kai-shek's constitution talks about Tibet and Mongolia as parts of China. At that time they had only inner Tibet in mind and not outer Tibet. Today both Tibets have been occupied by China and China claims that both Tibet were in fact one. This is a great distortion of fact.

J.M. MUKHI: Do we have any details of this particular nominated Tibetans either at Chiang Kai-shek's place or in the communist China assemblies?

S. RINPOCHE: Since 1951 when Tibet came under the Seventeen-point Agreement Tibetans are represented in the People's Assembly. Before that during Chiang Kai-shek's regime or before the Tibetan operation as far as I am aware there were no Tibetan representatives.

J.M. MUKHI: After 1951 these people went as representatives or were they nominated?

S. RINPOCHE: Nominated. There is no such thing as elections.

S.D. MUNI: In the British position *vis-à-vis* Tibet when do we find this change occurring of their considering Tibet as independent entity and Tibet as a suzerain of China? Why it happens? Here again there is a lot of ambiguity.

J.M. MUKHI: Yes I think we must close that gap roughly from 1914, the need for the British to make this war effort somewhere near the beginning of this war with Japan.

NARESH MATHUR: It may be a little earlier. There is a little bit of history to this. When Warren Hastings won the Battle of Plassey and entered Bengal he sent Francis Bopal, the Bopal Mission to Tibet in 1775-78. They discovered that Tibet was a cosmopolitan, robust independent state. When Bhutan invaded the State of Cooch Behar the Maharaja went to the English. So the British then wanted war with Bhutan. Cho-Yon relationship was developed between Tibet and Bhutan, Nepal and Ladakh. These countries were paying bi-annual, tri-annual or annual tribute to Tibet. Panchen

lama wielded great influence over Bhutan. The Panchen Lama went and mediated and solved the problem, and Bhutanese withdrew. The British were further impressed. They asked who was this Panchen Lama how did he happen to act as big brother? The Chinese were very suspicious. When they realised Panchen Lama was taken to Beijing and murdered, and at this time we find the isolation of Tibet. The Shangrilla type of image doesn't exist before 1775 because in Tibet you had Armenians, Italians, and all kinds of people.

J.M. MUKHI: I think the question was that we have to examine changes in the British attitude from the Younghusband time right up to the Boxer revolution and the overthrow and so on and the 1914. From 1914 the next phase, till the second world war — Anthony Eden's answer in Parliament and forward.

S.D. MUNI: I want to know when in 1904 during the Younghusband mission the treaty between Tibet and British India Empire was signed on equal footing. We take it as an evidence of colonists being considered as independent. From that position when we did they drift into suzerainty and why? That's the question.

S. RINPOCHE: First of all I would like to say that the British never considered Tibet as a sovereign independent entity. I want to say that the plight of Tibet today is a hundred percent result of British mischievous-Machiavellianism. Younghusband is treaty in 1904 with Tibetans was on equal footing. The treaty was a expedience a necessity of history, at that point of time. By any means they wanted to establish relations with Tibet which they could not establish through China in 1893 and 1897. After invasion they forced upon a treaty with Tibet but at no time after that did they depict in their records that Tibet was an independent state and that they had signed a treaty because they again approached China to ratify it. From this the British intention is very clear. At that time they couldn't enter Tibet through China and did so through a treaty, and after that tried again the by agreeing to the Chinese suzerainty over Tibet. This was clear in 1906 which was at the initiative of the British. British never changed their stand from suzerainty to sovereignty. Throughout the British international position for Tibet was that it was kind of under Chinese suzerainty.

NARESH MATHUR : Why?

S. RINPOCHE: It is important to look into this. During the 1912 convention if Tibet had known in the beginning that the British were calling them to accept the Chinese suzerainty our representative may not have gone for the convention. Shimla Convention was called to solve problems, to demarcate the borders between British India and Tibet and China and Tibet. The good offices of the British could have

helped in this and solved all disputes. When the three parties came for the convention the British asked both China and Tibet to present a draft agreement by which if it could be agreed upon they could all deliberate. Tibetans submitted a draft in which it stated that Tibet was a sovereign and an independent state and who wanted to maintain relations on equal footing with both China and the British and agree to demarcation of the boundaries. The entire draft was made independently. China submitted a draft which stated that Tibet was part of China that Tibet did not have any power or come into any agreement or participate in any discussion between the British and Chinese on the boundary issue. Both drafts are separate. The British placed third draft which said that China should accept Tibet's autonomy and Tibet should accept the suzerainty of China. If that was accepted Britain would act as arbitrator or mediator to decide the boundaries between both. The final draft was made by the British. It became clear that the main reason for the British to invite Tibet was to make Tibet accept suzerainty in future while making China agree to the British agreement with Tibet. Ultimately the agreement could not be signed, and a separate protocol between British and Tibet was signed. However a telegram asking the British representative not to sign was sent from London could not be delivered in time because of lunch break. After it was signed there was no way to withdraw but the British government never ratified that protocol and instead recognised China's suzerainty over Tibet.

NARESH MATHUR: As Prof Rinpoche explained Chon-Yon, is purely a personal relationship between the *dayak* and *gurudev*, no political content but had perhaps some political effect. Prof. Rinpoche explained, during the Manchu period this relationship survived.

One of the most important basis of the Chinese claim was that during the 19th century the last edict of the 18th century, 1792, 29 Article, edict the so called "Guidelines for the Administration" is concerning with the regulation of Tibet. Quanlong was in his last year as emperor. He had the centrist forces which repelled two invasions by the Gorkhas who attacked Tibet in 1788 and 1791. China's forces intervened to help Tibet. After 1791 invasion, the Chinese proclaimed this edict. That is interesting because it was during this period that Amban rule was established. I don't know whether these articles were officially abrogated, but at this time the post of the Amban was made almost equal to the Dalai Lama, and the Dalai Lama could do nothing without reference to the Amban. If this is the highest point of Chinese control over Tibet where they were even making a difference between internal administration and foreign policy, they were to some extent administering Tibet internally. Of course they ceased to have effect from 1840 onwards but what is the official position? When were these articles abrogated? When did they cease to have effect? The Chinese rely very heavily on the 1792/edict, articles.

J.M. MUKHI: I think it is the political scientist who can interpret the effect of military campaigns, invasions, temporary occupations, withdrawals, coming back again, trying to exercise some kind of control by way of extracting tribute or the extreme case of setting-up of an administration and working it as an integral part of a country. Now these are all questions of interpretation. Interpretation of what? Interpretation of historical situation that may or may not have any effect in law, may not, because law will take into account the emergence of a country as an independent country and history ceases to be relevant. Its merely a historical claim in the same way as whether the Mughal emperors went south, to what degree did they go down south, whether an area or a demarcated boundary and so on. Its all nebulous. Once we reach the legal part the historical part to that extent merely becomes an adjunct. It may have for some people a strong propaganda effect. Now what we are therefore trying to see is the strength of the Chinese claim and the strength vis-à-vis the strength of the Tibetan claim.

NARESH MATHUR: The Chinese position is this that these articles were in force, and at different times when China was attacked by the European nations and it could not perform various acts for various reasons temporarily Tibet went out of hand and out of control.

J.M. MUKHI: If that is an argument being advanced when did the alleged European forces come on the scene, what happened, what was the position before that and whether its deterioration and anything to do with the European forces. After all when the people's liberation took place, they said that it was to liberate them from foreign imperialist influences. All that has to be tested with regard to historical facts. The main exercise should be: first, to get at the facts, then to interpret. So the interpretation is a question.

S. RINPOCHE: The 29-point article to which you are referring signed in 1792, has two interpretations. The Tibetan perception is different from the Chinese perception. During the 13th century the relations between Tibet and Mongolia developed in a manner where the Mongolian administration would help and advice Tibet in case of any problems it faced. This understanding with Mongolia is what China claims as Chinese Suzerainty over Tibet. My answer to this interpretation is that these 29 articles were merely advisory in nature and there was no compulsion. Tibet had to fight the Gorkhas and Kashmir they received help in both. So the 29-point articles were guide-lines formulated to help in the smooth running of administration. At that time if China had exercised control over Tibet then there was no need for a 29-point edict. They could have just an advisor administered Tibet centrally through in administration.

This 29-point edict is not an agreement, it is an advisory note for smooth running of administration. The Chinese don't agree to this interpretation. They say it should

not be considered as an advisory note but as command for administration. This is one thing.

Secondly, it is not correct to say that Amban's status was equal to that of the Dalai Lama. It never was.

NARESH MATHUR: The 29-point articles says so. The English translation says so.

S. RINPOCHE: The proper translation says that Amban should be kept in confidence and every action should be taken after informing him. No authority was given to Amban to negate or alter any decision if he did not agree to a decision. Amban could report to China and China could give advice if it wanted but the final decision rested with the Tibetan government. Amban's position was only in advisory capacity.

The role of Amban was not very clear like when Pholha took over the power Chinese proposed that they could rule directly and post 5000 strong army in Tibet permanently. This was Chinese proposition at that time: Against this Pholha advised that this should not be done because Tibet was an independent entity and it could not be ruled the way China is ruled. So on the advise of Pholha China requested that there should be no duality, the ruler and Guru, i.e. the Dalai Lama should directly look into matters of administration. So the Chinese emperor requested the Seventh Dalai Lama to take the reins of administration in his hands. At that time the position of the Amban was very low. After the death of the Seventh Dalai Lama, the Amban elevated his position and enthroned a regent who was put below Amban. It appeared that the highest position in Tibet was of the Amban and the regent was below him in the hierarchy. So this never really worked.

After six months the Chinese representative came to attend the ceremony conducted after the demise of the seventh Dalai Lama. He was blind and came in palanquin. As he was the emperor's guru, Hututu which is a very high position, he was received. There is a long protocol between the Amban and Hututu and when the Cheu Cheu Vedu was received by Amban he presented him with a scarf. Chen Chen Vedu asked who was the person who gave him the scarf. He was told that it was given by the Amban. The two Ambans and they were introduced to Chen Chen Vedu. As is the tradition he took the scarf and returned one but did not talk to the Ambans. At that time the protocol was that the regent used to accompany the Amban. When the regent gave a scarf he was introduced to Chen Chen Vedu as Rinpoche, the regent of Tibet. Chen Chen Vedu asked Rinpoche that as king of Tibet he should not have come to receive him. Chen Chen Vedu got down from his palanquin and there was an exchange of scarves. He gave scarf first to the regent and accepted in return a scarf from the Regent. At night during the formal ceremonial meeting Chen Chen Vedu's seat was given to the regent, and the seat given to the Amban which was lower than the seat occupied by the regent was occupied by

Chen Chen Vedu. The Amban occupied a seat which was much lower to the others. Since then the protocol has changed and the new protocol continued.

I will give an example of Younghusband and about the Amban at that time. Amban told Younghusband that when he knew the latter was coming he wanted to receive him with due humility but Kashag did not permit him to do so. That is recorded. All his movements were subject to the Kashag's permission.

R.P. DHOKALIA: Irrespective of compulsions of imperialist powers vis-a-vis Tibet, and very complicated relations between China and Tibet during the course of history, did Tibet after the First World War or after the Second World War or during the present century assert its identity anywhere in international forums or regional forums or try to assume international rights and obligations?

S. RINPOCHE: Tibet received political advice from British India and from the Chinese. Both saw to it that Tibet did not get international exposure and remain secluded within its own shell. They had convinced the Tibetan people that they should never maintain links with the outside world and if they did Tibet would lose its religious and cultural identity. They told them that if they learnt English or Chinese and received modern education it would go against their culture and religion. The British soldiers worked effectively amongst the government officials and convinced the Tibetans that the policy of isolation should be followed otherwise it would be detrimental for Tibetan culture.

There are many examples. A delegation was sent out after the Second World War, to felicitate those who won the war. The delegation visited 26 countries, on Tibetan passport, including India and congratulated them. At that time there was demand for gold in America which they wanted as security to print currency notes. Tibetan trade delegation was sent to America. The trade delegation and the felicitations delegation went together. When the delegation was in America, Americans asked them to apply for United Nations membership, and they were told that the expenses needed for this would be borne by the Americans. The trade delegation reported this to Lhasa Government and asked what should be done. The Lhasa Government informed the trade delegation to carry out the duties it was meant to perform in America and not involve itself in anything else. This was the attitude. At that time the administrators of Tibet were not aware of the art of political diplomacy and lost an opportunity to enforce their power.

R.P. DHOKALIA: You mentioned before the invasion of Tibet in 1951 parts of Tibetan territory were captured by the Chinese which they slowly kept occupying. Were efforts made to bring this to the notice of Britain or any other major power? Were protests made saying that "our territory is being occupied"

S. RINPOCHE: No, it happened very slowly and we were not conscious about its consequences.

L.L. MEHROTRA: Another question that has been raised by the Chinese and to which many references have been made here is that it is the Chinese habit, a very calculated phenomenon, to cite the imperial borders of China in support of their claim over nation-states. Nehru had once told Zhou Enlai very clearly on this that the frontiers of ancient empires are made and unmade many times in history and cannot be a point of reference. I would invite you to that comment.

Secondly, China itself has acknowledged the sovereignty of many states that have come out of territories that were once part of the Chinese control. For example, Mongolia. If you regard Kublai Khan as a Chinese Emperor and consider Mongolia as a part of the Chinese Empire under Khublai Khan then that Mongolia is sitting in the United Nations for several years. If you regard Nepal as a finger of China, and as a finger from the palm of Tibet which is part of your body, then Nepal is sitting in the United Nations as an independent member. What about Siberia? They say almost three-fourths of Siberia was part of Chinese territory, but they have recognised the frontiers of Russia as a contemporary state and member-state of the United Nations. Therefore we cannot buy this argument.

S.D. MUNI: Which means that they are reconciling to the dismantling of the imperial border.

L.L. MEHROTRA: There is the dismantling of the imperial border and these are made and unmade. The last of them is the territory of the Soviet Union, which was given the definition of an empire and which is generally accepted by those who have admitted many of the Soviet Republics formerly as independent member states of the United Nations subsequent to the break up.

Another question is of defence and a frontier matter. You see one very major asset of a sovereign nation is its capacity to define its border and negotiate it if a dispute takes place.

I come from Kumaon, and there we have our border in Tehri with Tibet. In 1928, there was a meeting with regard to Tehri Border. The Tehri Maharaja under the paramountcy of the British, had a meeting with the Tibetans. The Chinese were not even intimated about this meeting on the border issue. What is the exercise of Chinese sovereignty or suzerainty over the territory when it is not even given an intimation. We are talking of the status of Tibet and I have put 1949—50 as the breaking point. I am not covering the area beyond that, because much water has flown down. We have gone through another phase of history. What reflection it will have on the status of Tibet is a different issue. But this is how the situation prevailed at that point of time.

Now in regard to another question bearing on the sovereignty and the sovereign status of Tibet. We have gone through the question of ratification or the recognition of the 1904 Agreement. 1904 Agreement is an exercise of sovereignty. Whether two imperial powers want some other arrangement to confirm it has no reflections on the status of Tibet. For their own reasons they may come to an understanding that ratification by China may be necessary. There is a clear motive behind the British seeking China's ratification, because as I told you they wanted China to be the intervening power between China and Britain. The British did not want the Russian frontier to advance to Tibet and the British did not want to come to a clash with Russia. So it is a concomitant of their imperial needs, that they need to have a treaty on the subject with China, but it has nothing to do with the status of Tibet. If China ratified that, the British also approached the Russians to ratify it. In 1907 they have signed an agreement with Russia. Does it prove Russian suzerainty over Tibet?

NARESH MATHUR: I think the term suzerainty first comes in the 1907 Agreement.

L.L. MEHROTRA: There is an agreement in the same year or the year next between China and imperial Russia on the question of Tibet. What I am trying to say is that China knew that Tibet had asserted its independence, therefore China also knew that it was becoming a weaker power. China knew that the days of the Empire were gone, that Manchu dynasty had been dislodged. China knew that it was in the process of evolution to a new nationhood for China itself. Sun Yat-sen is not known so much for throwing out the imperial authority from China and the concessions from China but for nationalism. Nation—building that is Sun Yat-sen. China was still keen to retain its hold over Tibet. Whether that desire is legitimate or not is not a different matter. It does everything with Britain, with Russia, with any other power to support its suzerainty. However Tibet continued to exist independently, notwithstanding all those Chinese endeavours in terms of internal administration, exercising authority with foreign powers, signing treaties, issuing passports, issuing currency which was recognised all over the world including the British and India that followed, and it was signing treaties, and agreements even on the frontier questions.

NARESH MATHUR: The extra-territoriality in China of Europe, which ended only in 1954. That is a reflection on China's status.

L.L. MEHROTRA: And the power China was building at that point of time. It was noted with great clarity that between the fall of the Manchu empire in 1911 and the occupation of Tibet by the China's armed forces in 1951, Tibet functioned as a totally independent international entity. During that period Tibet had all the trappings

of full statehood, as generally accepted under international law. During those four decades, foreign relations of Tibet, for example, were conducted by the Tibet foreign office. Tibet had signed treaties with foreign countries, issued passports to its people for travel abroad, discussed border issues with other concerned Governments, and exchanged formal visits as a sovereign and independent country with other States.

As early as 1903 when Britain invaded Tibet the Manchus did not come to Tibet's rescue and disclaimed any responsibility for the actions of Tibetans in Tibet. The war of 1903 ended in a bilateral treaty between Britain and Tibet. It was implemented and became the foundation for the relationship between Britain and the Tibet for the succeeding four decades or more. As a matter of fact, no less a person than Lord Curzon, the Viceroy of India, affirmed that Chinese sovereignty over Tibet was a constitutional fiction — constitutionally it did not exist.

Hugh Richardson the last Counsel-General of Great Britain in Lhasa for more than two decades said that, "the Government of Lhasa with which I dealt was beyond question and in complete control of its own affairs, dealing directly with the Government of India in such matters as frontier disputes, trade questions, supply of arms and ammunition and so on. There was no Chinese participation whatsoever in such matters and no reference to them nor were they informed."

Against this background and acknowledging that the Tibetans lived within the bounds of their territory recognised as their own, the United Nations repeatedly affirmed their right as a people to self-determination. Inter-alia the United Nations expressed their grave concern at reports to the effect that the fundamental human rights and the freedoms of the people of Tibet have been forcibly denied to them.

The exercise of the right to self-determination, as Prof. Dhakolia has pointed out, can result either in the establishment of total independence or autonomy within the sovereignty of a larger entity. Tibet laid claim to full independence since the declaration of the independence of Tibet by the 13th Dalai Lama on 14th February 1913. That is now almost a century. The Chinese on their part have given an expression to the autonomous character of Tibet as a State and people on numerous occasions within the bounds of the Peoples' Republic of China.

There are statements by the Chinese leaders in the fifties, including Mao Tse-Tung's and Zhou Enlai's, and quoted in the press repeatedly that Tibet was different from China, its people did not belong to the Han race and that China fully respected Tibet's ethnic, cultural and religious autonomy. From this a large number of questions flow, whether the Chinese have behaved all these four decades in a fashion that upholds the autonomy of Tibet or stands in total negation to that autonomy or has instead created a colonial and a genocidal situation in Tibet. These questions merit consideration.

Some facts are very clear. First, in blatant violation of Tibet's cultural autonomy the Chinese in a massive show of their power over Tibet recently disregarded and indeed set at naught the Dalai Lama's nomination of the new incarnation of the Panchen Lama and proclaimed their own choice.

The United Nations have documentary proof available to them of the disruption of the religious life of the people of Tibet throughout its length and breadth by the Chinese in the name of reform since 1951.

The people of Tibet have become a minority in their own country, thanks to the massive presence of the Han Chinese both military and civil which has multiplied year after year in an effort to supplant the native population, which amounts to an act of genocide. Similar attempts by the former Soviet Union in Central Asia came to grief well before the turn of this century but the stranglehold of China trampling over the autonomous character of the State of Tibet and the fundamental rights and freedoms of its people have continued unabated over the years.

Colonialism is bad in all its forms, but it is worst when an alien race attempts to substitute the ethnic character of a people by injecting itself into the body politic of the latter like a powerful virus multiplying itself to the utter detriment of the native race and eventually destroying it from within. In order to honour their commitment towards the autonomy of the religion and culture of Tibet, leave aside the claim to independence to Tibet, China as a responsible member of the world community should be called upon to reverse this process and as a first step start negotiations with His Holiness the Dalai Lama.

What has Dalai Lama done? He has implored his people to carry on their struggle for their rights non-violently, not like Bangladesh, and seeking no more than an autonomous status for its ancient land within the suzerainty of China.

VAN PRAAG: From early history till today in what periods did Tibet come under any foreign influence, domination, or suzerainty? You find that from year 0 to 2000, except for a short period in history, it came under some type of foreign influence, first under the Mongols, then under the Manchus, and in the last few decades under the Chinese. These periods of foreign domination are clearly exceptions to the rule and are aberrations.

Chinese scholars argue that Tibet was under the Manchu influence throughout until 1911, and it has been under Chinese Communist control again from 1950 until 1996. The period from 1911 to 1950 is an exception, an aberration. This is the Chinese argument. They agree that it was not under Chinese control from 1911 to 1949 simply because China had lost control of many other side-line areas. They argue that this period should not be argued against China in determining the status of Tibet.

In that context, it really depends, psychologically which way you look at Tibet's history. The Chinese scholars earlier used 1720 as the year for Chinese control over Tibet, and gave examples of marriages between the Tibetan emperors and the Chinese princesses as argument of Chinese claim over Tibet. That argument is no longer effective and the Chinese don't use that argument any more. They give that argument if their two premises are acceptable, one that the Mongols were

Chinese, and the second that during the period between the Mongol Empire and the Manchu influence in Tibet the Chinese inherited certain rights or certain influence from the Mongols, an argument which is again not correct. If you accept the two premises then one can argue that Tibet was under Chinese influence since 1720. Looking at different interpretations of history is the key to approaching the subject.

In trying to analyse the issue of status of Tibet we have to look into its essence. In this presentation we are trying to look at the issues of status, legitimacy and self-determination as they relate to Tibet.

Did Tibet have the attributes of a State on the eve of the Chinese invasion or not? One can have a lot of discussions and arguments about the history and different perceptions about the history, and they are important. Ultimately the question is whether Tibet was an independent country on the eve of the Chinese invasion. There are many States that had been independent far less long compared to Tibet at that time. If they are invaded today it would not be considered legal even if it can be proved that for a certain period of history they did belong to another empire or had come under the influence of another empire. For example, today Baltic States are considered independent even if for the period between the Second World War and 1991 they were under Soviet control and were a part of the Soviet Union. Legally speaking they have not lost their statehood during that entire period and their occupation is considered illegal. That is now the generally accepted view.

Another reason why it is important to look at it from that perspective is because under international law the loss of statehood or independence is very difficult to achieve. You can't just say well at some point of time Tibet became a part of China. What happened? How did it become a part of China? Was there a treaty? Was there a military invasion? Was there an occupation that was legal? Did something happen which changed the title to the property of Tibet or one sovereignty from the Tibetans to another power?

To this day Chinese have not been able to show any particular event to prove that Tibet had lost its statehood. They can show that at certain point in history there were different types of influences. All of these events taken by themselves don't prove a loss of sovereignty. Russia sent their army to Czechoslovakia in 1968. That did not mean that legally speaking Czechoslovakia lost its independence. Different emperors of China, Manchus, Mongols or Chinese have traditionally granted titles, given seals to rulers of countries all around China, does not mean that all these countries became permanent parts of China or their empire. In fact grant of seal or title was the form of recognition of the sovereignty of the ruler to whom they gave that seal or title. It was the recognition within the perception of the Chinese imperial view of the world that only the Chinese Emperor had a mandate from heaven and therefore, any other ruler was in a way below the level of the Emperor on a lower echelon. That was true of any ruler whether he came from Europe or Asia, whether it was the Pope or the Russian Emperor. They were all seen in that context. The

Chinese today use this granting of seal as a important proof of the extent of Chinese empire. If one looks at the countries which received these titles from the Chinese emperor, the very extent of it and its practice shows, quite contrary, that it was a form of recognition by the Chinese of their independence and statehood.

The other notion is that Tibet did come under some kind of influence in the Mongolian or the Manchu period. But these were not Chinese empires. Chinese history is being re-written today to show that all of these changes of power, whether it was Mongol or Manchu were in fact a form of internal change, just a different ethnic group happened to be in power, but all within this great State of China. That is, re-writing of history, firstly because the State did not exist exactly in that same context as today in those days; secondly, in those days it was certainly seen as, if one reads that Chinese history, as a foreign invasion or foreign take-over of power. In fact the 1911 revolution is seen as a nationalist revolution, the Chinese taking control over their own country again. At that time it was viewed in that light. It is also important from the Tibetan historical point of view because the Tibetans view their relations with the Mongols and the Manchus as relationships between religiously or culturally akin peoples and not as between them and the Chinese empire.

What political consequences of that may have been of that relationship is a secondary issue. But in terms of the perception both from the Manchu and the Mongol's side and from the Tibetan's side, both sides did not see China as being any part of their relationship. In the Manchu-Tibetan relationship, there were clear rules about who, for example, could be the Amban in Lhasa. It could be Manchus or Mongols, not Chinese. This was not by accident. There were prohibitions of marriages between Manchus and Chinese, but not between Manchus and Tibetans. Their kinship was very close and highly respected. From the Tibetan side there was also spiritual relationship in which the Tibetans recognised the Manchu emperor as an incarnation of Manjushree. Their respect for the Emperor was spiritual than political. The Manchus did use that relationship to expand their political power and influence in Tibet, that is a reality but that did not change the legal position between the two parties in that relationship.

If one looks at the position of Tibet on the eve of the invasion, then one has to look at whether the Tibet had the attributes of statehood, and that has already been discussed.

LEGITIMACY OF STATE AUTHORITY

2. LEGAL PERSPECTIVE

B.C. NIRMAL: When Prof. Dhokalia talks about legitimacy of state authority he is talking in terms of international norms which have evolved over the years. For example, during French and American nationalism during the era of enlightenment self-determination came to mean that legitimate state has support of the governed, the consent is there. That was a principle of Political Science.

UN Charter adopted at San Francisco did not prescribe any form of government. Every State was free to have its own kind of government. Then in the Universal Declaration of Human Rights and International Covenant on Human Political Rights, the right of people to participate in free and fair elections was recognised. That was the cold war era and the right could not be clearly defined and enforced.

After the end of cold war this right is being not only defined but also implemented and enforced at the international level. For example, what business did United States had in asking then ruling military junta of Haiti to leave. Here the concept of international peace and security was not linked with the principle of democracy, human rights and self-determination.

What perhaps you want to say is that representativeness of the government is the basis of state authority. Other points are: respect for human rights, respect for democratic pluralism, respect for minority rights. Now under the terms of evolving a human right law a state derives its working legitimacy from its respect for human rights, from its representative character, and so on so forth.

Again in this perspective we should examine what authority and legitimacy the Chinese Government had in the case of Tibet. There is no doubt that the Tibetan people are the relevant unit entitled to self-determination. The General Assembly has recognised this right thrice. What is required is, what the principle of self-determination means in case of Tibet and what are the possible approaches to deal with the right of Tibetan self-determination? In order to arrive at a consensus on these two issues it would be necessary that there should be a consensus on two basic question, regarding legitimacy of the state authority; second; the content of self-determination and third, means and methods of realisation of the rights of self-determination.

S.D. MUNI: Just one intervention. This could be done what you have said in a very effective way if we take note of the violations of the rights of the Tibetans by the Chinese action in various ways because then we know what have been the violations of the rights which flow from the recognition by the United Nations of the right to self-determination of the Tibetans.

NARESH MATHUR: I would suggest that in the first the Friendly Relations Declaration, (1970), the Vienna Convention of Human Rights, (1993), and the two variables of remedial secession, the degree of representativeness and the destabilising effect of the claim, these would be the current instruments by which this could be judged.

On human rights our Tibetan friends here can tell what has been happening in the United Nations Sub-Commission, and how these resolutions were vetoed eventually, and what kind of evidences were marshalled.

We need to examine the political structure within Tibetan Autonomous Region (TAR) what degree of autonomy is provided for there. We have case studies on violation of housing rights. Whatever rights are there in the Chinese Constitution are not secured by the people of Tibet. There is no mechanism in the Chinese judicial system to enforce the element of autonomy that they have. It is not the same as was in USSR. In USSR there was Article 272 which Latvia did enforce. The Baltic States used Article 272 of the USSR Constitution, which Mao Zedong turned down in 1936. That is a fact. In the Chinese Constitution there is no measure of enforcement. We have to take cognisance of the fact what their constitution system provides for and why they cannot succeed in securing for themselves the minimum content of the autonomy assured in 1951.

Again we have to look at 1951 because for China it is not a treaty it is an agreement. The Seventeen-Articles contain some measure of autonomy. Each of the articles has been breached.

So we have to look in terms of the Chinese Constitution also. We can't just take it as a postscript. We need not be spared for Goa, Hyderabad, Sikkim, Kashmir. We should look into the elements of Indian constitutionalism and Chinese constitutionalism and then the meaning would become more clear.

R.P. DHOKALIA: For the purposes of discussion I would like the participants to consider this question. Was the sovereignty or statehood of Tibet in the past well determined? The question of legitimacy of China's position *vis-a-vis* Tibet and of the legitimacy and reassertion on the part of Tibetan people, for restoration of their old status, or recognition of their identity as a state is the most important to be delved.

J.M. MUKHI: The answer has been given by Prof. Nirmal. The answer is this that the legitimacy of China stops on the theory of their's being an original illegal invasion and occupation of the State, therefore when the State emerges again it emerges as a continuity despite interruption.

R.P. DHOKALIA: So we conclude that China's exercise of authority today is illegitimate.

J.M. MUKHI: Exactly. It is illegitimate also from another point of view namely the right to self determination. Assuming everything is against us as far as the legal status is concerned, even then the Tibetans are a "people" and with one voice they want independence. This is their right to self determination that has to be honoured.

NARESH MATHUR: One small observation that can be helpful is the case of the Baltic republics. The Baltic states got their statehood not by UN intervention. They got it under Article 272 which eventually Gorbachev in 1990 in USSR parliament conceded. There is no parallel to Article 272, the right of cessation in the Chinese constitution. That is the difference.

J.M. MUKHI: That is a very legalistic way of putting it. The realities are very different. The realities are that USSR collapsed under American pressure and it disintegrated. That may be before the actual collapse but it would have happened even without that article.

S.D. MUNI: The significance of the continuity theory of sovereignty is absolutely vital for the Tibetan case. It is vital and is effective when there is a situation of assertion of their rights or when there are signs of disintegration of China on the lines it has taken place in the case of Soviet Union. The Baltic states did not raise the continuity theory when Soviets were in a position to shut them up.

J.M. MUKHI: You are cent percent right. I think we have concluded on this part.

L.L. MEHROTRA: I am delighted that my paper has elicited so much enthusiasm and critical response. At the end of the debate I notice that we must take note of the constant refrain in the Chinese behaviour on this issue of asserting their sovereignty and their claim to ownership over Tibet. That has happened over the centuries irrespective of the situation in which China itself might have been. Even during periods when it was not able to assert that sovereignty in physical terms China had maintained rights over Tibet.

Secondly, we note that probably the fate of Tibet today would have been different if the British between 1947 to 1952 had not asserted that the status of Tibet was not clear and that in balance China exercised suzerainty over Tibet.

Third, that the position of India which was most critical to the issue flowed not from the exact status that Tibet had enjoyed between 1911 and 1947 but very largely by what the British stated. Except that in their first communication to Tibet and during the interim government, their invitation to Tibet, would warrant otherwise.

The question before us is not as to what China would like Tibet to be, or what India has accepted Tibet to be, or what the British represented Tibet to be, but what Tibet's original status was when a serious attempt to alter that status was made.

Before, during and after this debate, I am convinced that, in 1949 when the Chinese first sent an ultimatum to the ruler and marched their forces into Tibet they were acting in violation of the sovereignty of an independent state. This in itself, apart from any other factor entitle the people of Tibet to the restoration of their full sovereignty. All aspects of sovereign statehood were fully satisfied. Internally, there was full authority over internal administration.

Externally, states are admitted to the United Nations after examining the fact whether their external affairs, defence, and communications are within its full jurisdiction, and power effectively exercised by the state or not. If an honest exercise is taken by the Credentials Committee of the United Nations, consisting of all the members of the Security Council, at any time it would bring Tibet into the ambit of independent states.

Since 1949 China has altered the status of Tibet. The question is whether we can revert to the *status quo ante*. We have already passed through another phase of history and of practical politics. What impact it will have on the status of Tibet is a different question. In 1949 China was acting as an aggressor, an invader on a territory which did not belong to it and which was exercising all the factors of sovereignty.

Chinese claim that *Amban* was present at the installation, of the Dalai Lama. Let us not forget that *Amban* was not the only foreign representative present in the 19th and 20th century at the Tibetan court. By treaty and under international law, Nepal continuously without break has sent a representative to Tibet in Lhasa. Even when other consulates removed themselves Nepal did not remove its representative from Tibet. It is governed by only one treaty of 1858, treaty between Nepal and Tibet, a treaty which China has not repudiated, and a treaty where China is not a party. That is the exercise of sovereignty.

In terms of defence, Tibet was not only defending its territory from outside aggression but was carrying out its own campaigns. The Chinese complaint was that you are asking us to help you but you are doing much, too much. We are not bothered about you, you can do what you want, we will not come to your rescue.

Somebody has raised this question of 29-point agreement of 1792. After the war between Tibet and Nepal was over, Emperor Qianlon made certain suggestions (not diklat), which were referred to by General Fu, Commander of Manchu Emperor, to the VIII Dalai Lama as follows:

There is no doubt that the Dalai Lama acknowledging his gratitude to the Emperor will accept the suggestions once all the points are discussed and agreed upon. However, if the Tibetans insist on clinging into their age old habits, the emperor will withdraw the Ambans and the garrisons after the

troops are pulled out. Moreover if similar instances occur in the future, the Emperor will have nothing to do with them. What are you doing making life difficult for us.

This is not the language of a sovereign or suzerain. The suzerain's call at a moment like that would be that we will dethrone you, we will throw you out, you go out of existence. Nothing of the kind. On the other hand, the Manchu General said: "Tibetans may decide for themselves as to what is in their favour and what is not as to what is heavy and what is light, and make a choice on their own". Now that was Tibet's states under the Manchus.

VAN PRAAG: There is very little doubt that at that point in time Tibet behaved in every way as an independent State and had the attributes of statehood. For the sake of argument let us consider the Chinese point of view on its claim on Tibet that Mongols and Manchus were Chinese and therefore Tibetans became a part of the Chinese Empire. For China today, or in 1951, to claim that Tibet was a part of China only on the basis of an old and antiquated imperial claim is a revisionist form of politics to which China is so much opposed to, namely imperialism. It is going to back to reconstruct that empire, whatever the reason. If that is the only claim, then that should be pointed out as much as possible in Chinese literature and towards the Chinese.

Another argument advanced is a social one, which Chinese used to use but nowadays far less frequently. They argued that Tibetans were incapable of ruling themselves, they were technologically, socially and culturally backward and that was the reason why China benevolently came into Tibet to civilise and help its people. This argument can easily be set aside. This interpretation needs to be argued against and people reminded of this outdated colonialist argument. Nobody knows better than India how the British and all other colonial powers, including the Dutch, used that argument in every colonial venture to say that they were there to civilise some backward natives and without them these people did not know how to govern themselves, so it was a benevolent move to civilise. This argument certainly at this time in history should not be supported.

From the legal perspective the arguments of suzerainty were also fabrication of the British imperialist policy, to some extent Russian — but much less so, and as Lord Curzon said that it was a constitutional fiction, a policy which suited both parties, meaning Tibetans and the British. It suited them because it was a way of keeping the Russians at bay, it was a way of keeping the Chinese at bay. Suzerainty was not sovereignty and so for the Tibetans it suited them because it was better than what the Chinese were claiming, and for the British it suited because it kept the Russians out and it kept the Chinese out to some extent as well. It was a fiction, in the sense, that it did not relate to any reality. The Chinese in fact never accepted it. They rejected that claim and no party really felt it was representation of reality.

Prof. Dhokalia's paper raises many questions on the issue of legitimacy of authority. I think the legitimacy of the Government is an essential issue, to which not much attention is being given. Prof. Dhokalia refers to the validation of authority as a result of consent of the governed expressed through democratic entitlement.

If one looks at the question the legitimacy of China's rule of the Tibet, one must also address the issue of the legitimacy of governments, legitimacy of states towards the populations or even towards groups of the populations within their states. In that respect I fully endorse the views expressed by Prof. Dhokalia.

If one is to reduce the notion of legitimacy to a very simple and essential level, one can ask as to what are the functions of a State and why do we have this artificial construction of a State. This is fundamental because State is supposed to perform certain basic functions to exist. The three fundamental functions are:

1. Protection of the people.
2. Promotion of populations — social, economic, cultural well-being or welfare of the people.
3. Representation of the interests of that population externally,— towards other groups that are now formed into States. Whatever that may be, it does not need to be States, it can be towards international organisations, towards anything external.

These are the three fundamental reasons for having a State at all. Somehow at this particular time when the notion of statehood and the meaning of state and the erosion of sovereignty is so much in discussion, we should try to bring the discussion back to this issue and see how we can rebuild what is really a legitimate state and what is not. In that context discussions on democracy are an expression of it rather than the essence of it because you can have a legitimate state that provides all these three functions. Even if it is not democracy, if the people see their governments are legitimate and the governments provides all these things, even if they may not have had a formal democratic system, as was in the past or in some traditional society.

Then the question really arises that if a government which represents that state at that time, oppresses its people, kills them, massacres them, does not secure their safety but does exactly the opposite, as in the case of Burma; or if the State does that specifically to a population group within that State, then a question arises about the legitimacy of that government or that State in relation to either the entire population, or specifically to that group, as belonging to that State.

Secondly, the same argument goes for a State which exploits its people economically. If the government takes away resources from certain regions and does not give anything back to the people or is corrupt and appropriates in its own pocket the revenues there arises another question of legitimacy. There are governments that act in the interest of foreign interests, whether it is multinationals or foreign powers.

Again that creates the question of legitimacy of whether that State or government really is fulfilling its functions of promoting cultural, economic and social development of its people.

Thirdly, its representation internationally. If a Government, like the Chinese Government, does not represent the interests of Tibetans abroad in the UN or in its bilateral relations, but represents the interests of another group, it may be the Chinese, but it may also be simply the interests of the power holders — the Communist Party, or even the smaller groups few people in power, then again it is not fulfilling one of the essential elements that lends legitimacy to that government.

If one of these three or all three are missing, a very serious question arises as to the legitimacy of that Government, and if it continues over a long period of time then it can be shown that it is not just a particular regime, but it is actually the States that have over a period of time shown this lack of legitimacy, regardless of the change of leader, then the whole question of the legitimacy of that State arises in relation to that particular population group. It does not mean the whole state has to cease existing, but its sovereignty claim over that particular group does have to be questioned. This is where democracy is concerned, as perhaps the most effective and the best expression we have of the consent of the governed, that indeed is the legitimate government that represents, protects and promotes their interests.

In this area we have to look at what we can do in the future in some concrete way and how specifically we can apply this question of legitimacy to the Tibetan cause. Again we have to bear in mind that this is a question which is very important for the Chinese both from the legal point of view, legitimacy, and the fundamental question of the essence of the State and its legitimacy. As a result of that one might have to think about ways to campaign internationally to put pressure on China to allow free elections in Tibet to free Tibet and not only human rights. It maybe a long road if one learns from the Baltic state experience — it was pressure, that changed things in the Baltic states. The governments did not challenge the Russian ideas of sovereignty over the Baltic States in the last five years of their existence under the Soviet Union, but they started challenging within that framework, their right to elect their own leaders locally. That is what slowly changed everything since leaders had different ideas than Moscow. Same is the question of free press or free expression. That can change things more fundamentally sometimes than a debate from outside. Again within the framework of the Tibetan autonomous region as it is set up by the Chinese today, challenge the laws that the Chinese recognise, a challenge to whether they even being applied as they are recognised by the Chinese, but not only that but also challenge the laws, study of the laws and say this is not correct because of either inappropriateness or something which does not fit with the international standards or because it does not comply with Constitution of the People's Republic of China. There are different levels at which we can debate, but also debate internally in China within that system.

There has been a lot of discussion about the different phases of Tibetan history. Can we formulate as a group what the status of Tibet is or should be considered as being also by the outside world. What was the status on the eve of the Chinese invasion? Is it possible to state that at least all the participants here consider that in 1951 Tibet was an independent State before signing of the agreement, on the eve of the invasion?

J.M. MUKHI : I think we are ultimately thinking in terms of an adjudication by an independent body as to what was the status of Tibet. Necessarily there are two or three critical dates. In order to determine whether this aggression was an international aggression or a domestic police action, it would be necessary to be clear about the status in 1911, 1913 and also the status in 1950-51.

VAN PRAAG: So I understand that what you mean is that there could be difference in the status in 1913 and on the eve of the invasion. But something happened between those two periods that would have changed the status or are we saying that whatever the status in that in-between period was, that is what we are talking about?

ASGAR ALI ENGINEER : Well, naturally the 1950-51 status would be more important one, but for historical background purposes it would be necessary to see what was the status at that point of time in 1911, whether China had conceivably any vague historical claims of suzerainty, etc.

VAN PRAAG: Are we looking for a formulation on the status of Tibet between 1911 and 1951 in the first instance.

TAN CHUNG : If we again get into this kind of debate on the status of Tibet in 1911, or 1913 or 1951, we will be repeating ourselves. We have talked enough about it already.

Secondly, Prof. Rinpoche has outlined what is their objective and if we talk anything else, we are imposing our will on representatives of Tibet. If they say that their objective is not political and is only spiritual enlightenment and spiritual refinement, then the whole objective changes and the whole exercise changes. Then there is no use talking about all this, undertaking this exercise. That means we will be acting either as a parallel or contrary force to what they desire and what they want. It was a revelation to me what he said because I thought that objective is to get autonomy, and independence of Tibet, but now the whole objective is really different. I doubt whether we should have this kind of exercise or we should abide by their wishes of what they want and how we can help in that process.

VAN PRAAG: I don't think Prof. Rinpoche's observations changes anything to the debate that we had. It was a clarification in response to a question about what the Tibetan position is. Tashi Wangdi explained the position from the Tibetan Government in exile cabinet and from the Parliament, and it is shared by the Government and by HH Dalai Lama. Prof. Rinpoche explained the philosophy underlying the Tibetan struggle.

L.L. MEHROTRA: Prof. Rinpoche's statement, is complimentary to what Tashi Wangdi has said. There are two facets of the same thing, one is the political aspect of the struggle, the other is the spiritual personality of the struggle. Rinpoche is a highly spiritual element in our midst and he has emphasised the spiritual part of it, the spiritual message of Tibet and the spiritual mission of Tibet for now and for times to come. What Tashi Wangdi has emphasised is that the political aspiration of Tibet, to attain a status in which this spiritual mission can be more easily fulfilled. The two are complimentary to each other and we should not read too much of a contradiction between the two of it.

C. MAPRAYIL: I personally don't see any contradiction between the message from Rinpoche and what we are trying to do. Probably he has a message from Dalai Lama, but what we are concerned is status of Tibet and civil liberties and what we as non-Tibetans from India or international, should do about it, regardless of what his wish might be. I think spiritual and material should go together and we should go ahead regardless.

O.P. TANDON: As a recorder also I would like to put the statement in proper perspective. Immediately after Prof. Rinpoche made his statement, the Chairperson said that there is a non-Tibetan support for Tibetans and the way has to be found out for that. What kind of support we can build up for the Tibetans.

AJIT BHATTACHARJEA: I don't think that Prof. Rinpoche took a line which is very similar to what Gandhiji took during our movement, and it does suggest a rather different approach which we have to keep in mind. One is the non-confrontational approach to the Chinese. It is a totally different approach to the situation of trying to find common areas or trying to stress commonalities and not for stressing opposite. Though it is necessary to stress the legal and other political aspects of the struggle, nevertheless we must keep in mind the approach that Prof. Rinpoche stressed and that was spiritual, but certainly it does put limits on the political and legal approach. It must not be a confrontational approach, basically that is the point.

S. RINPOCHE: I think I have created a lot of confusion, instead of clarifying.

First, I did say that our ultimate goal is not political, but I did not say that we have no political goal. The political independence would be a means to achieve our ultimate goal. That was very clear in our mind.

Second, we do not insist on complete independence provided China can create a situation in which the Tibetans can flower themselves — have the *Swaraj*. At the present moment China is not giving that and therefore we have no option but to ask for complete secession or separation from China. That situation is created by the Chinese rulers. They can change themselves and create a new acceptable situation. We are not fighting for the political position, we are fighting for a situation in which our legitimate duties can be performed.

At this workshop we are trying to find ways and means to ease or change the present situation in Tibet and that is a kind of asking for complete secession or complete independence of Tibet. It is our official position also that unless and until China responds to His Holiness's proposals, we have no moral or legal obligation to abide by the offers given in His Holiness proposals. At the moment the Tibetan people are for the complete independence. But complete political independence is not our ultimate goal, that will be our means to achieve our ultimate goal. This should not be misunderstood.

J.M. MUKHI: The proposal that was made to China was a without-prejudice proposal. It was a proposal of aspirations, but the Dalai Lama did not give up the right to ask for political independence if that would be the only way.

VAN PRAAG: That is absolutely true, it was without prejudice.

R.P. DHOKALIA: Since the theme is status of Tibet in international law, we are not concerned merely with legal status, particularly taking into consideration what Prof. Rinpoche has said. He has taken a stand like Mahatma Gandhi that end does not justify means. In order to attain that political status, Tibetans are not resorting to violence.

Status entail certain rights and duties, that is why we are discussing the status in terms of legal rights and duties. In historical context what was the status in the past, and in the present situation. In the primitive societies, status is derived not from contract, but from moral or traditional consideration.

What status Tibet enjoyed in the past? A lot of debate has already taken place in respect of historical and legal status. Political status is also relevant to understand, how far political support provides a status to the government or to an authority, because without political support the state authority has no status, the government has no status. The Government derives its authority or status from legal provisions. Lastly, the question of spiritual status. What you have emphasised is that the Tibetan question is not merely a question of political independence or a legal entity, but all

along history, Tibet under a spiritual leadership of Dalai Lama has enjoyed a status which has been historically attributed to it. Therefore, understanding of status in historical, legal, political, and spiritual perspective is extremely relevant. We need not go into the debate again whether or not in history Tibet was a state or not a state, independent or not, nation or not a nation because nationhood is a concept of 16th century.

Many of the nation-states of the Europe are not states. I suggest that we may not enter into a debate which has gone on *ad nauseam* on historical records about the status, and similarly about legal. That debate need not be reiterated. In the context of the status you reiterate what is the stand in regard to historical, legal, political and spiritual perspective? That element has also to be added in the context of Prof. Rinpoche's observations.

VAN PRAAG: Can we then formulate in a sentence or two something exactly on these lines without going into the history, what the consensus is in terms of the status of Tibet before 1951 in terms of its historical context, its legal context, its political context and its spiritual context? I think, Dr. Nirmal had formulated a part of it very well in his paper and we could use it as a basis.

S. RINPOCHE: In this we should stick to the year 1951 or at the time of Chinese aggression and not to mention the 1911.

L.L. MEHROTRA: We should specially mention that in 1951 Tibet entered into a kind of a colonial situation.

VAN PRAAG: What is the present status of Tibet?

R.P. DHOKALIA: With reference to 1951, the distinction you made in your comments, duress over representatives and coercion of a state as a whole, has to be brought out.

NARESH MATHUR: You rightly mentioned that nothing much happened between 1911 and 1951, that also means that the status continued unchanged. Just two things I want to say about this.

First, the custom has been and shall continue to be a source of international law and perhaps status would depend upon Cho-Yon. I don't see any reason why Cho-Yon should not enter the realm of the terminology of international law, otherwise we get straight-jacketed into the very limited options which are available.

When we talk about an independent state, in an Asian context, I have never been able to answer this question when did a nation-state come to exist in Asia in the sense that we understood it in Europe.

Perhaps Tibet in 1951 had acquired that tribute of statehood. But in 1911, there is the fall of Manchus, second, in 1913 is a repudiation of Cho-Yon and the

proclamation by His Holiness. So in international law, if we want to look into the status, we will have to see what is the effect of this proclamation of independence by His Holiness in 1913? These three events would crystallise what the status was of Tibet. I suggest that we keep this in mind, even when we are talking about 1951 because the status continues unchanged, then this holds good to 1951.

TAN CHUNG: I want to react and emphasise the two aspects raised by Prof. Rinpoche.

First, that the Tibetan issue, is not an ethnic issue, not a national issue or an independence issue, it is a human issue. Secondly, that this problem has to be solved by the majority of the Chinese people themselves. It is an issue on which the Chinese people have to express their opinion and it depends upon the support of the Chinese people. I very much agree with this.

Looking at the history of the Tibetan issue is a very complex problem and an interwoven problem and it cannot be summarised in one or two sentences. If all sides have a justification what should we say about it? So the point only weakens the case. That is not in the spirit of what Prof. Rinpoche has said if we are working on a human issue.

We should also avoid importing a lot of modern western concept of nationalism in Tibet historical perspective. I think, if you really have one or two sentences worded very strongly pinpointed to particular year, that will not have good response in China. That is what I want to say.

VAN PRAAG: It is not the idea that we simply put a document together with one or two sentences on everything and that is the end of it. There is supposed to be a publication that comes out with all the complexities, all papers with discussions.

MIRA BHATTACHARJEA: I agree with Tan Chung that certain concepts were alien to us in this part of our world. And by 'us', the entire Asian region, perhaps even the African region. One of the concepts that was alien to us was that of sovereignty, perhaps even independence. I don't think we fully understood what the concept of independence meant. That has to be taken in as a part of the complexity that he is talking about. It could, of course, a very few would deny that there was an impulse within Tibet towards independence and Tibetan sovereignty. I am not a student of international law but I would like that to be taken into account.

Coming to the question of dates, there has been a jump from 1913 to 1950-51. As someone who has been interested in the history of this area, why do we leave out the very critical date of March 1947, the Asian Relations Conference, that is, even before India became sovereign when the biggest gathering of nationalists, those aspiring to become nations was held under the aegis of the Indian Congress Party in New Delhi. It is at this meeting in March 1947 that a map of

Tibet in the Hallway did show Tibet as outside the borders of China to which protest was raised by the Kuomintang delegation to the Conference and the protest was accepted, and that distinction between Tibet and China was removed from the map. In effect, in 1947 at the Asian Relations Conference, the decision which should have been taken because that was the height of nationalism, that Tibet has had as much a right to independence as the successor states in the rest of South Asia had. Nepal retained residual sovereignty which is recognised by the British. What is the status of Bhutan? What is the status of Sikkim? What is the status of Tibet? Now Sikkim and Bhutan were not raised at the Asian Relations Conference, but the question of Tibet was raised. That is why in terms of historical process, for whatever political reasons, a certain decision was taken which was to colour the decisions of the Government of the India and other Governments thereafter and whatever the western concept of sovereignty the fact remains that one of the aspects of sovereignty is that recognition must be gained from outside powers, and unfortunately, no State recognised that.

J.M. MUKHI: Sir, I don't think that the issue at the Asian Relations Conference was the critical one.

VAN PRAAG: What we should do is to just take note of what you have said. We will try to incorporate some of that in the paragraph. I think, you are right looking at different dates is only going to complicate issue. The Asian Relations Conference both sides can claim that it showed independence or it did not show independence because as many things had happened they did show Tibet as a separate delegation from China. So I don't want to get into that thing. The other question is whether States recognised Tibet officially before 1951? I don't want to get into that debate as none of this is conclusive. We will try to formulate something which everybody feels comfortable with, that takes the point that was very well taken into account that the western perception of a nation-state was not something that existed throughout the history of Tibet or India or China. But there is a time when that becomes more and more mature everywhere and also in Tibet. I think, that is why, people are talking about this period of 1911 and after because that is a period wherein in Tibet itself, where Dalai Lama itself proclaims independence. He is obviously very conscious of the meaning of that proclamation. So that is the time when that also changes in Tibet as it does happen in the other parts of the world.

Let us try to formulate and get to the next point.

There are really three points, we should either choose between them or incorporate them or use all the three. The first is occupation and seizure, second is the colony and the third is status of Tibetan Government in Exile.

One was legal that Tibet is an occupied state which was the basic premise. It was pointed out that one has to be careful to emphasise the illegality of that

occupation as opposed to simply occupation, otherwise it could be seen as a legal occupation in which case China could be said to have fulfilled its tasks and occupation. It does not change the status of the fact that it is not a part of China. It simply means that we are not objecting to the way in which China is fulfilling its obligations under the Geneva Convention.

Second, there is the possibility of, within that context, emphasising the illegal seizure of Tibet which is the initial step towards the occupation. The second possibility that was suggested was to define it or to interpret or to use it. Of course, this was a political decision and not specifically legal one as a non-selfgovernment territory. I think, we just need to briefly look at what the consequences of that might be. Is it something useful to do? Can we do something with it?

Thirdly, this question of a colony which was just raised again, that by Chinese aggression Tibet was turned into a colony of China. This would affect the debate on self-determination and that is also an important point.

It is possible that we can have a consensus on these, that it was occupation, its illegal occupation, seizure was illegal, it is non-self-Government territory and it is a colony. All of this is possible. Is there anybody, first in the negative sense, has any objection to calling it an occupied territory and illegally occupied territory? Then we will see what the consequences of that might be from the legal perspective, and from political perspective.

So if we start first by saying that it is an illegally occupied territory with emphasis on legal seizure, is that, at least one of the acceptable formulations for the present position in which Tibet finds itself? If so, then what are some of the consequences? It was pointed out already that it has a very definite consequence for population transfer because an occupied territory under the Geneva Convention 1949, the occupying power was not allowed to move civilian population into the occupied territory. And of course, in Tibet that is a very big issue. So that is one consequence. What other consequences can one come up with if it is defined as an occupied territory?

I may not have made myself clear. I do not mean what the consequences are in practical terms for the Tibetans. What is the consequence of putting the label of legal occupation in legal terms? In other words, as a result of that, it forbids population transfer. But as a result of that what other consequences flow from it? J.M. MUKHI: In respect of occupied territories like imposition of citizenship, different laws, there are so many things. All those would emerge as a consequence of declaring it to be an occupied territory.

L.L. MEHROTRA: First, militarisation of the area, secondly suppression of civil liberties, thirdly, exploitation of economic resources to the detriment of the natives and to the advantage of the occupying power and fourth, threat to peace and security in terms of raising this war within neighbour which actually took place.

O.P. TANDON: The Tibet resolution of European Parliament of 13th July, 1995 very clearly reaffirmed the illegal nature of invasion and occupation of Tibet by the Peoples' Republic of China. We could, perhaps, bring in this fact in our own statements.

VAN PRAAG: Some of the consequences Mr. Mehrotra mentioned, are legal consequences and some are practical consequences. Certainly the exploitation of natural resources is forbidden under the Geneva Convention. Geneva Convention applies. We don't need to repeat what is in it and the details.

VIJAY KRANTI: When one country occupies another country, the consequences are not limited to the occupied country. The moment a country is occupied, the borders change. For example, we never had a border called India-China Border. We never had a Chinese army on Indian border, never in the history. It was only after China occupied Tibet that Indo-Tibetan Border became Indo-China border. So are we including consequences on the geopolitics of that region or are we going to limit it exclusively to Tibet?

VAN PRAAG: If we limit it to legal issues, whether or not we call it an illegal occupation the armies of China are on the border of India. That is a factual change of circumstances. That is not the point I am making but it does bring out a point which is important, does this have full recognition or non-recognition of the occupation? If it is an illegal occupation, what then are the obligations of other States in relation to that occupation? I think that is very important. I think, there is an obligation for non-recognition of annexation, but it will have to be looked at exactly where that is. Do we agree that that is something that flows out of it? I think so.

J.M. MUKHI: Recognition is very closely related to this.

VAN PRAAG: At least the obligations to do or not to do certain things are under Geneva Convention, but there may be other sources of international law which gives certain additional obligations. I am not sure which they are.

L.L. MEHROTRA : I raised a point of the threat to peace and security of the region which is very valid.

VAN PRAAG: In other words, it creates an additional threat to international peace and security which has some consequences.

B.C. NIRMAL: The resolution passed by Sami Parliament on the situation of the Tibetan people on 27 May 1994 says:

Today Tibet is an occupied country. The Chinese invasion is a breach of international law and a threat to the security of nations. The Sami-Parliament condemns the constant breaches of human rights perpetrated by the Chinese authority against the Tibetan people.

If there is no strong reservation to this aspect, we can make it part of our resolution. There is another resolution the House of the Representatives of Belgium passed on 29 March 1994 which refers to the massive transfer of the Chinese population in Tibet. You have just mentioned population transfer. The massive deforestation practised by the occupied Chinese which destroys the delicate ecological balance of Tibet.

Conscious of the danger of disappearance of the Tibetan national identity and of the Tibetan culture.

Considering the growing militarisation of Tibet by China and the installation of the Chinese nuclear arms in Tibet.

Cease the policy of the massive Chinese implantation in Tibet which violated the Article 49 of the Fourth Geneva Convention (1949) and which has reduced the Tibetans to the status of minority in their own country."

That is just for your information. We can formulate our resolutions accordingly.

VAN PRAAG: There are also resolutions passed by the Australian and European Parliaments, the US Congress, all of whom basically make the same point and we could refer in the document specifically to those and open-ended resolutions passed and other resolutions affirming recognising Tibet as an illegally occupied State and some of the consequences of it.

R.P. DHOKALIA: May I add one more item to the consequences that flow from the occupation of a territory in international law, that is to have the aggression vacated and to impose sanctions for the implementation of the UN Resolution.

VAN PRAAG: Can we now move to the next category again of justifying the present status of Tibet? We have talked about occupation, we partly agree on that. Can we make any use of the notion of non-selfgoverning territory? In principle nobody has an objection to say that it is a non-selfgoverning territory. I see a lot of nodding. So we will do that.

The next is a colony. Again I think everybody has agreed that the notion of colonialism is key to the argument of self-determination. The question is really of definition, of what is colonialism and how does it apply in Tibet. In the action plan,

we can see in what way we can concretise it rather than going into the substance of what colonialism is now? Then in principle we should use the term colonialism in the document. It is agreeable.

Next is a stage very much directed towards the action plan, that is the status of the Tibetan Government in exile. First there is the whole notion of the recognition of the Tibetan Government in Exile as a government in Exile for which the precedent is there during the Second World War, and more recently the situation in Haiti is an example of the precedent of a government in exile who was recognised, the situation in Kampuchea for a long time under some definition was illegitimate Government of Kampuchea. I would doubt it following the discussions we had and Prof. Dhokalia's paper that it was a legitimate Government. Really, it kept the seat in the UN despite the occupation by Vietnam. There are precedents for governments maintaining the authority and legitimacy outside a State, the Government in exile. I have so far not heard any dissident view about the Government of the Tibet in exile or the Tibetan administration in exile. Let us not look at the internal position with India which it has to be defined in a certain way under Indian law, but in an international sense, it is a Government in exile.

J.M. MUKHI: I am not clear what is the relevance and the importance of the attitude of the host country so far as the Government in exile is concerned. Would it be open to the international community to deal with the Government in exile in spite of the attitude of the host country?

VAN PRAAG: Generally the Government in exile is established in a country which recognises it as a Government in exile, and that makes easier for the countries. But is there a legal bar or besides the political one, for other countries to recognise a Government as being a Government in exile, even if the Government of the country to which it is located does not?

R.P. DHOKALIA: Recognition is *de facto* and *de jure*. *De facto* recognition in course of time becomes *de jure*. The host country has *de facto* recognised and giving practically all facilities. Recognition is a political act. All along history, recognition has been determined by policy considerations. In case of Tibet, *de facto* recognition has already been given and, therefore, as far as host country is concerned, we can reiterate that this *de facto* recognition amounts to, in course of time, as *de jure* one.

VAN PRAAG: We will not be talking about at this point in the document saying that we recognise Tibetan Government because it is not for individuals or jurists or anybody to recognise, it is for the Governments to recognise or not recognise it. But it is legitimate for us to consider the Government as the legitimate Government in exile of the Tibetan people.

S. RINPOCHE : We should comment that the people of Tibet recognise the Government in exile as the legitimate Government of Tibet.

L.L. MEHROTRA: The key element is the recognition of the Government in exile by the people of Tibet who are the hub of the whole issue. But our stating that there is de facto recognition on the part of the Government of India or the Government in exile operating from Dharamsala or any other part of India would call for an immediate reaction which would not conform to the good political sense.

VAN PRAAG: I would certainly agree, but what we can say or in the action plan look at the question from the point of view of this group acknowledging the recognition of the Tibetan Government in exile by the Tibetan people and see what we can do with that. So if we formulate in that sense, everybody will feel comfortable.

L.L. MEHROTRA : That would be the best thing to do.

B.C. NIRMAL: The question of Tibetan Government in Exile is a very complex question. I am reminded of the instances of many Government in exile which came into existence after the First and the Second World War. Many Governments functioned from England were neither accorded any recognition nor did they demand recognition under the presumption that there existed legal continuity between the Government and the State. The question is whether there is any legal continuity between the Tibetan State and the Tibetan Government in Exile? If Tibetan State still exists under illegal occupation of China and before invasion, Dalai Lama's Government was in power in Lhasa and many Parliaments and many international bodies recognised Dalai Lama Government as the legitimate representative of the people, can we argue that the attitude of international community as a whole towards Dalai Lama and towards the Government in exile supports that there is still some sort of legal continuity between the State of Tibet and the Government in Exile? If we say so, then our conclusion will be that there is no need for recognition. The overthrown Kampuchean Government, represented Kampuchea in the United Nations for so many years. Even Vietnamese illegal occupation of Kampuchea and the puppet Government could not alter the legal situation. So this point requires further study.

We can pass a resolution to the effect that we regard Tibetan Government in Exile headed by His Holiness Dalai Lama as the legitimate representative of the Tibetan people and we request the United Nations and international governmental bodies to see this in this light.

There is already a Statement of Action by the Conference of European Parliamentarians, West Minster, 4 May 1993, that Dalai Lama and the democratically elected Tibetan Government in Exile should be given the fullest international

support and the opportunity to address the UN General Assembly specially in recognition of the nonviolent approach of the Tibetan people in expressing their desire for independence.

VAN PRAAG: We have to find a formulation which shows the continuity part of it. Dr. Nirmal has spelled out the consequences of Government in Exile being recognised, but even if it was not recognised, the Government of Tibet in Exile of Dalai Lama, are the legitimate representatives of the Tibetan people. This is reflected in many resolutions that have already been adopted. It is not particularly legal concept, but it can be used and can have political and legal ramification. That should definitely be stressed. The question of trying to get recognition as a liberation movement or something else is part of the action rather than a question of fact because the two are somewhat contradictory, the Government in Exile or the liberation movement.

PEMA THINLEY: I would like to address the issue of legitimacy from the point of view of the legitimacy of the Chinese rule over Tibet.

First, the question is whether Tibet was part of China at the time of establishment of People's Republic of China which was proclaimed by Chairman Mao on 1st October 1949. At that time Tibet was not a part of China. The Chinese invasion of Tibet was the consequence of the proclamation of the People's Republic of China. There is a theory of self-determination which says that this right belongs to a historically wronged people, to historically wronged nation or state. Tibet cannot be said to be a part of China, it was annexed by China.

Secondly, what is the requirement of legitimacy of state authority? Is this legitimacy a one-time requirement in the lifetime of a state authority, or whether this requirement of legitimacy continues throughout the existence of the state authority? I think that it continues throughout the lifetime of the existence of the state authority. Even if we agree that China has some legal basis for its occupation of Tibet, the legitimate occupation can become illegitimate through abuse of sovereign power. We have got examples and testimonies of Chinese systematic human rights abuses in Tibet. The International Commission of Jurists, *Report on Tibet* (1960) spoke about religious genocide, the environmental degradation, exploitation of natural resources, and political repression in Tibet. This establishes a clear case of abuse of sovereign authority of Tibet even if it can be assumed that China has some basis for claiming its sovereignty over Tibet. This is an instance where a right of internal self-determination can assume right of external self-determination.

Thirdly, I would like to draw attention to the relevant international instruments that guarantee right of self-determination to peoples. China says that the right to self-determination of people can be construed as authorising or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political

unity of sovereign independent State. Chinese claim over Tibet is based on interior claims. It presents itself as successor to imperial China. Now China as an empire and China as a State are two different things, and empire is made up of dominant state and subservient states. Since China bases its claim on imperial claims, such imperial claims cannot stand in the case of modern principles of international law where democracy, free concern and all these are given prime importance, the legitimacy of Chinese rule over Tibet cannot be said to have been established.

R.P. DHOKALIA: May I draw your attention to recommendation in this regard from other fora? For instance, from Public Law 100 to 138, Foreign Relations Authorisation Act 1992-93, Washington. This is a Bill passed by Senate and House of Representatives in the United States which reiterates that Tibet's true representatives are the Dalai Lama and Tibetan Government in Exile which has been recognised by the Tibetan people.

Tibet has maintained throughout its history a distinctive sovereign national cultural, religious identity, separate from that of China, and except during the periods of illegal Chinese occupation has maintained a separate, sovereign, political, territorial identity.

The London Conference statement on Tibet states what is the remedy. It says that the preponderance of evidence suggests the abiding desire of the Tibetan people for the free return from exile of Dalai Lama, the end of Chinese control, the secession of human rights abuses and the establishment an independent Tibetan State..

If we accept Tibetan Government in Exile of Dalai Lama as legitimate and continuation of PRC's illegitimate occupation, will such recommendation be acceptable?

L.L. MEHROTRA: It flows from the discussions that Tibet has a separate national identity, in one that it enjoyed all the trappings of sovereignty and independence, and is entitled to a fully independent status. There does not seem to be any doubt except for the fact that the Chinese have put it in dispute by its military occupation. On the other hand the Chinese sovereignty over Tibet has been put in doubt by the claims of the Tibetans who are in Tibet. This is a clear case where the sovereignty of China over Tibet is in fact in dispute.

As far as the question of making recommendations is concerned what position should we adopt? I felt enlightened by the pragmatism of Prof. Rinpoche who said that even though they are entitled to sovereignty and independence, as a practical measure they do not want to subsist in a situation of perpetual hostility with China.

There are two factors on the ground. First the Tibetan Government, if it is a Government, is a Government in Exile and is not in a position to enter immediately or in foreseeable tomorrow into the citadels of authority in Lhasa. We have to proceed from this fact that we are carrying out a fight from outside, even though the flame of

the struggle is within Tibet itself, with whatever degree. In this situation the practical approach would be to stress that while Tibet is entitled to a full sovereign status we would like the Chinese to grant autonomy guaranteed in their Constitution and statements on Tibet and Dalai Lama, the real fountain of that authority be allowed to return to Lhasa in peace and security. There may not be a immediate solution but as Prof. Tan Chung suggested the dialogue should begin. As an academic body and a research institution, we may pronounce our view on the question of the legitimacy of the authority of the Dalai Lama and illegitimacy of the Chinese presence in Tibet, but as a practical step, we must stress and emphasise on a returning to a dialogue with the Chinese. We can either call upon the United Nations to ensure a meaningful dialogue between the two, or the Tibetan Government in Exile could request member-states of the United Nations to pressurise the Chinese to start the dialogue. We can request each state of the world to bilaterally take up the matter with the Chinese.

J.M. MUKHI: The theme of this session is legitimacy and, we have to make a recommendation. If Chinese occupation of Tibet is illegitimate, the corollary is that the Government of His Holiness the Dalai Lama is the only legitimate Government of Tibet. The logical conclusion is the independence of Tibet and the sovereignty of His Holiness the Dalai Lama. Let us not divert into making recommendations as to what the Chinese should do. We are pleading with the Chinese to open a dialogue. I think, it runs contrary to the logic of this session.

R.P. DHOKALIA: There are two aspects. Legitimacy of Dalai Lama's Government is one thing and illegitimacy of occupation is another thing.

As far as the legitimacy is concerned, there are no two opinions. Legitimacy of the Dalai Lama's Government, there is no difference of opinion. As far as illegitimacy of Chinese occupation, is concerned there is no difference of opinion.

Let us first take legitimacy. Now I don't find any contradiction. You said that the Government of Dalai Lama is legitimate, so what? If it is legitimate then what is it that the people of Tibet want? What are their aspirations? What wrong has been done to them? That wrong should be corrected, and remedy provided. Remedy can be legal, or it can be political. When we ask them, what they want, people want independence, freedom. Dalai lama made a statement about autonomy but he also retracted. Dalai Lama has played a unique role in the sense that authority has flowed from him historically but he has introduced democratic functioning. Prof. Rinpoche had made it clear that Dalai Lama has left to his people, Parliament, representatives, to decide upon the future of Tibet. If Dalai Lama's Government accepts, what the Parliament's or representatives of people say and what they want we should support that action. If we support them, then what Ambassador Mehrotra has said, has validity that political process should start with that ultimate end in view with the phased programme. This we should support and this could be good.

J.M. MUKHI: May I request that Dr. Praag may draft a recommendation firstly in regard to the illegitimacy of the Chinese occupation, setting out major points which establishes that illegitimacy, and the second part is the legitimacy of the Government of His Holiness the Dalai Lama. We could then decide on the recommendation.

VAN PRAAG: I endorse what you said and with the last portion of the formulation of Mr. Mehrotra's make a few additions. It would be very useful, as one of the earlier speakers said, to emphasise the point of the legal, political and moral legitimacy.

Secondly, I agree, that the Chinese have been trying to drive a wedge between the Dalai Lama and the people. One of the functions of re-establishing this legitimacy by the statement that is going to be made is to re-emphasise that the Dalai Lama and the Tibetan Government in Exile is the only legitimate representative of the Tibetan people and entitled to negotiate on their behalf with China. There has also been some suggestions frequently in the China that there may be some other partners they would be talking to as well. The view here, is the Dalai Lama and his Government are the only legitimate representatives who can negotiate. It is a contradiction for us to anticipate such negotiation might entail. Whether it is autonomy, independence or a zone of peace, that is entirely for them to decide. I would be very careful in making any recommendations on those lines. At the same time, it is important to emphasise in a statement the rights of the Tibetan people. In other words, the basis for negotiations should be as a legitimate representative of the Tibetan people or the Tibetan State. I would use the term 'negotiation' instead of dialogue because it gives a clear definition of what you expect the Chinese to do. For them a dialogue is informal exchange. The real negotiation is what we are talking about.

I will suggest we should not only call upon Governments to emphasise this in their dealings with the Chinese Government, but NGOs, parliamentarians, to endorse this point of view.

CLAUDIA JOHNSTON: I would like to support what Michael has recommended. We should do some research with regard to other precedents on how other negotiations have succeeded. In our history there have been very significant negotiations which have brought together peace process. We could look exactly at what steps were taken, we can make some suggestions or follow the lines hopefully to setting up negotiations. In all other resolutions the international community has always requested and promoted negotiations to take place but it has not happened yet. So can we do some research with regard to what can we specifically do in a practical way to encourage negotiations to be established.

TAN CHUNG: Prof. Rinpoche said in good spirit that we must stick to principles. There is no harm of saying that Tibetan right is legitimate. On the other hand we

must appreciate what Ambassador Mehrotra said that you must be practical and futuristic in what we suggest. Claudia Johnston has said that we must call upon the world, but the major portion of the world is the Chinese people. Prof. Rinpoche said that it is for the Chinese people to decide. If they do not accept, then the case is weakened. So this is one point.

The world is changing very fast and so are the concepts. For example, even the concept of legitimacy is changing. We often say that communism has spoiled the case of Tibetan freedom. As a student of history I would like to remind this forum that when communism came to China, it professed autonomy and independence of Tibet. Mao even said that if Tibetans want independence let them have independence. However later on they changed their position. I want to say that we must be very careful and we must have a historical insight.

There is a doubt whether China is changing. I think China is changing. Reference was made that Peoples' Republic of China is anti-religion. Recently a Chinese Director from a Chinese institution visited me and wanted me to help him in making TV films on Buddhism. I asked him why? He said, that in China there are 120 million Buddhists. So, China is changing.

There was a reference as to how Tibet issue can be resolved. Tibet is not an isolated issue which would help Tibet only. It helps China and it helps the humanity. I have all sympathy for Tibetans and they must have a place for freedom. As a student of history, I would say that the Himalayas created the Indian and the Chinese civilisations. We love human rights. There would not have been the Ganges without Himalayas. So it is the Himalayan zone which is the origin of humanity. When researching on this point, I found that the identity of Tibet came in to being only in the 7th century. As such, some of the Tibetans in Chinese region are from Chang race. Some part of Chang race and Tibetans have common ancestors and it was for this that they went to Yellow River to create the Chinese civilisation. I have just taken up what Prof. Rinpoche said that it is not just a Tibetan issue. I am very serious. Many of my colleagues may think that I am romantic. But I am serious. Let Tibet play an important role in China.

R.P. DHOKALIA: Your sentiments are well taken. India has gone through an experience of *Hindi Chini bhai bhai* which was followed by an invasion of India in a ruthless manner and all sentiments disappeared. Who is the ruler there matters. It is the politics which has subordinated morality. As far as history is concerned, it is very good that there is a change in China and religion is being revived. Religious fundamentalism has appeared on a global basis and in future there may be clashes between civilisations. We are concerned here with the legitimacy of the Government of Dalai Lama and fulfilment of aspirations of the people of Tibet. The only criteria of legitimacy is consent of the people of Tibet. We may agree to Michael's formulation but in reference to aspirations of Tibetan people their democratic entitlement must be fulfilled.

JURGEN AXER: I just want to add to what Michael said. In addition to the change in the formulation from dialogue to negotiation. We should include as a target group the business community. If you want to put pressure at the time of negotiations through powerful lobbying group, it can be on the Chinese who could be pressurised because of their keenness on economic development. NGOs can approach American and European multinationals and business community, governments and international organisations to pressurise China to agree to negotiations on favourable terms.

R.P. DHOKALIA: Now we pass to the second point of discussion the illegitimacy of the occupation by PRC of Tibetan territory and persecution of the people. What are the consequences? Let us first state the consequences and suggest remedies for the liberation of the people or victimisation of the people.

C. MAPRAYIL: There are news about human rights violations in Tibet. We could recommend that the Chinese PRC should accept a neutral team or a fact finding team to investigate and ascertain the extent to which these violations are taking place.

AJIT BHATTACHARJEA: I am not sure that the case for supporting the legitimacy of the Dalai Lama's Government has been made strongly. First historically, and second as a matter of sentiment.

We all respect His Holiness, but that in itself does not make a case for international recognition of his Government as the legitimate Government of Tibet. That aspect of the statement, we should reconsider because if that is questioned then the whole statement will also be weakened.

We can certainly say that the Dalai Lama or his representatives are the one who should partake in any negotiation in view of history, but to bring in the question of legitimacy introduces international, and legal problems which may be difficult to establish. I am not sure whether it is tactically or otherwise a good move to emphasise or commit ourselves or expect others to support a statement in which he is described as the legitimate Government of Tibet.

P. MORENO: Prof. Dhokalia said that the Government of Tibet is entitled to protection, welfare and representation of the people of Tibet. Our Governments are already fulfilling those things. The question was to demonstrate that the Tibetan Government headed by the Dalai Lama is legitimate and how the Chinese rule of Tibet is not legitimate. If Dalai Lama's Government of Tibet is legitimate, is it representing; protecting and working for the welfare of the people? That is what gives it a part of legitimacy at least in practical terms. Of course, the Chinese rule is not legitimate because they are not protecting, they are not providing for the welfare, and they are not representing them.

We should be free to talk about sovereignty or autonomy and other things but only as alternatives for negotiations and not prescriptions or recommendations. If the negotiations lead to sovereignty then we can consider some of the questions, or if you want only the autonomy these are the other questions. In that framework, I think there is more flexibility.

T.N. CHATURVEDI: There should not be any distinction between His Holiness the Dalai Lama and the people of Tibet because the authority in him throughout history has been inherent and intrinsic, whatever be the mode of his selection. His authority is a part of tradition and history which has become a custom, a law, belief and everything.

Secondly, in the modern sense His Holiness has in recent past tried to democratise the working of the Tibetan movement and the Government. That is why Dalai Lama has asked the Tibetan Parliament to decide on the modalities of negotiations.

Thirdly, the Tibetan Government in Exile has its own limitations about protecting the welfare of its people because Tibet has been forcibly, illegally, illegitimately and immorally been deprived of the chance to protect their own people. The Government in Exile has done all it could to rehabilitate the people and educate them. His Holiness the Dalai Lama or the Tibetan Government functioned not for their own sake but on behalf of the people.

There is a fair amount of agreement that the distant goal of independence should be reiterated and in no formulation it should get blurred.

B.C. NIRMAL: All issues being discussed here are inter-linked. I have discussed in my paper the question of credentials of the Tibetan Government in Exile entering into negotiations with the People's Republic of China. Once you say that Tibetan Government in Exile is not a legitimate Government then the thesis that Tibet is still an independent State, presently under illegal occupation is assailed. Why should China enter into negotiation with Tibetan Government in Exile or Dalai Lama? They can enter into negotiations with Panchen Lama whom they have discovered. They can tell the world opinion that the people of Tibet are overtly with the PRC Government in Tibet and, therefore, those who are speaking about self-determination of Tibetan people are very few in number and they are being engineered by some vested interests. All these issues are inter-linked, and we should not confuse. One party's illegitimacy, is another's legitimacy. They are closely inter-linked.

MIRA BHATTACHARJEA: I am more than a little confused as to why we need to establish the legitimacy of the Tibetan Government in Exile in terms of international law. What is the need for it? Prof. Nirmal just said it is to ensure that the Chinese will not negotiate with another group say the Panchen Lama. Or is it hoped that the Chinese will come around and accept it? If it is the first, there is in fact nothing

that can be done about it without the acquisition of sufficient strength, power and influence by the Tibetan Government in Exile which puts the issue once again, within a political frame.

I think, sometimes the political argument or the strengths and weaknesses of other legal arguments are over looked. If the Government exists, what is the need then to declaim its legitimacy or its illegitimacy in terms of law. Politically it is a reality whether the Chinese accept it or not. Does it have functions to fulfil under international law, is not the question we should ask. But the question that needs to be asked is: is it fulfilling the functions that a Government fulfils? That is, in actual practice does it have the support and loyalty of the Tibetan people, etc. in the struggle for self-determination?

The issue which then arises is: who would recognise this Government in exile? The Indian Government certainly will not. The American Congress may have once again passed a resolution asking for a special envoy to be deputed to the Tibetan Government in Exile but that is not government policy. So what really is it that we are talking about? If legitimacy exists, if it is performing its functions, if it is accepted by the Tibetan people, then it is a matter of other states recognising it. That is in terms of law and international practice. To my mind, this question of illegitimacy/legitimacy is the least relevant of all the issues at the moment.

The most relevant issue is that if the Government in Exile exists, is it fulfilling its functions? It must do so demonstrably, and it must acquire strength. What will the Tibetan Government in Exile gain if it is declared to be legitimate in terms of international law? The Chinese will say it is not legitimate. Is legitimacy an instrument, is it important, is it essential to what we are discussing today, namely the right of this Government and of the Dalai Lama to represent the Tibetan people and the right of the Tibetan people to self-determination? These are the essential issues. Is the question of its legitimacy material to the cause? This is what I think we need to ask.

R.P. DHOKALIA: Law is not mathematics, that two plus two is four. Governments in exile existed and functioned in the past during and after the Second World War without any recognition as to who was the actual Government in authority. We are not the United Nations giving a decision, we can only reiterate a situation. China says that Dalai Lama is not the representative of Tibet. We reiterate that historically, politically, economically, socially, from all points of view, he is the sole representative. The question of recognition comes when something is in dark or doubt is created. There are two parties, PRC and Tibet. Both parties are giving arguments. The third party judgement is to be given by the court or by independent bodies.

In our view, PRC's occupation of Tibetan territory is illegitimate and illegal, and Dalai Lama's Government is the only Government which truly represents the Tibetans. We reiterate these arguments in order to strengthen a cause which is also supported by a number of international resolutions.

Prof. Rinpoche on behalf of Tibetans said that they don't want any favour. They have placed their cards before us. It is for experts to tell to what extent the Tibetan cause or the arguments given by the Chinese are justified or not justified, legitimate or not legitimate. In that context, he asked us to guide them and tell who is wrong.

Legitimacy or illegitimacy is relevant from this point. In the various resolutions also it has been pointed out that Government in Exile has functioned without any kind of recognition.

VAN PRAAG: Mrs. Bhattacharjee has asked a very pertinent question: what is the practical value of this whole issue of stating or not stating, promoting or not promoting the legitimacy of the Tibetan Government in Exile and also Dalai Lama? Besides the moral issue it is important to state that there are a number of points that are of extreme practical importance.

First, when we talk about the functions of the government and of His Holiness, one of the important activities of the Tibetan Government in Exile has been to try to speak in the name of the Tibetan people to Governments and to the international organisations. However, Dalai Lama has not been allowed even to set his foot on the grounds of the United Nations whether it be in New York or in Geneva or anywhere else. He is prohibited from walking in the building of the United Nations. In other words, what the Tibetans need to be able to do is have more access to the international community, to speak not as individuals, not as Nobel Prize winner but as a representative of the Tibetan people, to be received by Foreign Ministers and to be received by Governments officially as many countries have done. More countries need to receive him in official capacity and not in the capacity of a Nobel Peace Prize winner or a spiritual leader. So that is one important aspect.

There are some people among the Tibet's Support Group who question whether the Tibetan Government in Exile is the best representative of the Tibetan people. Some of them have contacts with individuals in Tibet and they say that they know better what the Tibetans want than the Tibetan Government in Exile. Fortunately that is not the view of most Tibet Support Groups. For the groups who have different view point it is important to reaffirm that the Dalai Lama and his Government represent the aspirations of the Tibetan people. This group should reaffirm and also actively pursue and promote this view to other parliaments, individuals, governments to recognise the Dalai Lama and the Tibetan Government as representatives of the Tibetan people.

Some Governments may be willing to recognise the Tibetan Government in Exile as a legal Government. It is not out of question. We have talked to some Governments and there is a movement in that direction. But China challenges Dalai Lama and his Government's legitimate right to speak on behalf of the Tibetan people. They assert that Government of the Tibet Autonomous Region (TAR) represents the Tibetan people or the Beijing itself represents Tibetan people.

It is therefore important to state what we believe. Today for the first time, the Chinese Government is challenging not only the Tibetan Government and the Dalai Lama's legitimacy as representing a Tibetan people, but even the Dalai Lama's spiritual authority to recognise spiritual leaders in Tibet. The whole dispute about Panchen Lama is a dispute with China challenging spiritual function of Dalai Lama. They are saying he has no right to select the Panchen Lama, which is the right of Chinese Government. That is a fundamental issue which needs to be challenged. One of the ways to approach it is to simply say that Dalai Lama is a legitimate representative of the Tibetan people and his Government not only in the political but also in the spiritual sphere. This Chinese challenge with respect to Panchen Lama has very serious ramifications if it is not challenged by Governments and by international organisations.

P. MORENO: I agree with Michael that there is relevance to the question of legitimacy. In order to demonstrate the legitimacy of the Tibetan Government we must attract the attention of the international community. For example, the Tibetan Assembly of Deputies passed a law declaring one working day, Tuesday for prayer and meditation. If we can demonstrate that the Tibetan people in Tibet obey this law, it will have several implications. One is that the legitimacy of the Tibetan Government will be demonstrated in practical terms. It will be a question of individual liberty to which they are entitled to pursue their own prayers, there will be an economic implication because there it would lead to some disruption in the economic system, there will be a political implication in terms of who is in charge and of course it would be, nonviolent. We will get the attention of the international community and even of the Chinese Government.

C. MAPRAYIL : Prescribing things which the Tibetan Assembly of Deputies may or may not do to be seen to be respected across the border perhaps may not be necessary at this stage. It may be quite sufficient to say that the Tibetan Deputies could think about ways and means of being seen to be trying to enforce authority within Tibet. We should leave those things to them without being too prescriptive. The 1993 London Conference on Tibet came out with very suitable, well-formulated resolutions. We could endorse and agree on some action plan so that we can create a better environment in which the international community will be listened to by the Chinese authorities, and the Chinese authorities will listen to the international community. In that context, one proposal is that we should make some kind of recommendation to allow a team of international observers in Tibet to monitor human rights violations.

NARESH MATHUR: Maybe, Prof. Rinpoche could tell us whether in the charter of the Government in Exile, some statement is made about the continuity of the Government and His Holiness's status.

S. RINPOCHE: There is no special mention about continuity in any statement but it is obvious to all the people of Tibet that the present Government is the continuity Government which was established in the 16th century when the fifth Dalai Lama took over the power from a Mongolian military force headed by Gurshi Khan. Since then this Government has come down without a break. That was the reason when I stated that it would be better not to mention the years 1911 or 1912. These are the western interpretations. The Tibetan perception of history is that after 1274, Tibet never lost its sovereignty at any time. We never thought that it is necessary to restate in the preamble of the charter. The charter is in addition to the continuum of our Governing system. The Government consists of four or five Ministers, sometimes with a Prime Minister and sometimes without PM. headed by His Holiness. In the absence of His Holiness there used to be a Regent who is invariably assisted by one or two Prime Ministers. In the present case, His Holiness was heading the Kashag without a Prime Minister and there were six Ministers. Out of six ministers four of them were able to join His Holiness and, therefore, the complete Government arrived in India with its treasury, with its authority, and with its seal. There has never been any discontinuity of the Government in office even for a single minute.

R.P. DHOKALIA: When you say Government of Dalai Lama in Exile, it pre-supposes continuity. Legitimacy continues even if loss of territory is there. Territory is not in their control but they are discharging four functions of the State from India.

A suggestion came about Tibetan Parliament's law to observe one day for prayers. That it is a function of Tibetan Parliament to take up whatever the course of action they want to take in order to test to what extent the Tibetan people still derives inspiration from Dalai Lama.

Recently Panchen Lama has been selected by the Chinese and probably he will be projected as true representative and negotiations will be made with him. Is it necessary to take note of imposition of Panchen Lama or we just ignore it? When we say legitimacy of Dalai Lama, we are reiterating his position on the basis of historical, religious and other connections. We can also say that the intention of the PRC is very clear by interfering with the traditional mode of functioning of Tibetan institutions, and this is a result of illegitimate occupation.

L.L. MEHROTRA: There cannot be any doubt about the legitimacy of continuity. Dalai Lama is the spiritual and temporal head of the State of Tibet duly acknowledged by everyone in the world. It was when China's armed forces entered Tibet and made it impossible for him to function as the head of the state, he was compelled to take charge. When he left, there was such a massive demonstration in sympathy for the Dalai Lama and for the autonomy of Tibet that millions had gathered in the capital of Lhasa alone. He was the legitimate head of a legitimate Government, very popular in his State, commanding the allegiance of all his people within the territories of Tibet

and any Tibetan outside even at that time. When Dalai Lama left the borders of Tibet and came to India it was a flight to freedom. He brought with him his entourage. That Government has continued. There can't be any doubt about the legitimacy of that Government. That is the legal position.

Politically things may be different. For political reasons, India may or may not recognise it. For political reasons, despite a resolution by the Congress which is the representative of the people of the United States of America, the State Department does not act as though it recognises the Government in Exile.

Now the position of the Dalai Lama internationally is clear and well accepted. It is too obvious to deserve any reiteration. But if there is merit, if there are questions raised, then that may be done.

As far as the question of Dalai Lama's authority to appoint the Panchen Lama is challenged, that is a very critical issue from two points of view. The Chinese have committed a blatant violation of the autonomy of Tibet by appointing Panchen Lama and setting at naught and dismissing the appointment of His Holiness the Dalai Lama, because in any event Dalai Lama is the spiritual head of the people of the Tibetan race. There is a great necessity to challenge the fact that the Chinese do not have that authority. His Holiness only has that authority and once he has exercised his discretion and appointed a person as the Panchen Lama there is neither any need for the Chinese to do so in the spiritual terms. If it is, it is political manipulation and that manipulation is innocuous in purely spiritual terms. I am talking of Dalai Lama as the spiritual head. Any incarnation in Tibet has to have only one recognition and that is His Holiness Dalai Lama. The only appointing authority is His Holiness the Dalai Lama's. This needs to be challenged. When we talk of the violation of the autonomous status of Tibet or the true character of Tibet, when there is an attack on the cultural personality, this is a paramount demonstration of that attack on the cultural and spiritual personality of Tibet by assailing the choice of His Holiness Dalai Lama of the Panchen Lama.

R.P. DHOKALIA : Would you agree that in the formulation which Michael is making, a para may be added about blatant violation of the autonomy of Tibet and challenging the freedom of choosing spiritual heads that they have enjoyed unhindered and unhampered, historically and morally.

NARESH MATHUR: The institution of the Panchen Lama is intertwined with the institution of the Dalai Lama because I do not know what was the real role of the Panchen Lama in the choice of Dalai Lamas, but there is some connection. While recognising the Panchen Lama the Chinese said that they relied upon the 29-Articles of 1972 concerning the administration of Tibet. I was informed that this is misbegotten as these Articles were merely recommendatory in nature. A statement should be made, that 29-Articles of 1972 were merely recommendatory and the Tibetans did not in any event comply with them.

R.P. DHOKALIA: The appointment of Panchen Lama is a blatant violation of the special authority of Dalai Lama and autonomy of Tibet. This may be in the formulation.

P. MORENO: I think it is important not only to question the legitimacy of the election of Panchen Lama by the Chinese Government but recommend that some religious body or a group of Buddhist scholars do an enquiry into it and see what should have been the procedure from the perspective of a Tibetan customs and practices and spiritual belief. The appointment of a spiritual leader for a group of people is not only a political action but is a violation of religious liberty since there are people who disagree with the procedure. This would be a direct challenge to the political rule of China in Tibet.

R.P. DHOKALIA : People's Republic of China's occupation of Tibet is illegitimate because it is in violation of the UN Charter and international obligations by virtue of acts of aggression, seizure of the territory, transfer of territory and redrawing of the map of Tibet, destroying the identity and unity of Tibetan people, transfer of the population, abuse of human rights, pervasive genocide and various violent repressive measures.

Recommendation can be of two kinds, one, by unequivocal condemnation of these acts and secondly, appealing to the various Governments and the United Nations and its agencies to take steps for protection of human rights and human dignity in Tibet, stopping of genocide, stopping of various repressive measures and creating conditions in which it becomes possible for Dalai Lama and refugees to return to their home and exercise their religious freedom in pursuance of their goals which are traditionally held dear by them all along history, and in preserving the identity of Tibetans.

Let us discuss the issue of transfer of territory and destroying the identity and unity of Tibetan territory. A number of international organisations have condemned this and have urged the PRC not to resort to measures which affect adversely the Tibetan identity.

T.N. CHATURVEDI: When we are discussing this question our attention is on Tibet as it existed before the Chinese aggression. That is why the regrouping of Tibet was motivated for their political convenience and to destroy the identity of Tibet. That kind of a situation has to be rectified. This was not the case like partition between India and Pakistan which was made after some kind of an agreement. This is an outright aggression. Tibet means Tibet as it existed then and there is no debate about it.

L.L. MEHROTRA: Some territories were detached before 1950.

R.P. DHOKALIA: They have been integrated into the Chinese territory. Just like a transfer of population, transfer of territory is equally important.

I.N. CHATURVEDI: Then it should be restoration of Tibet's own geographical identity as it existed in history.

NARESH MATHUR: I support what Mr. Chaturvedi is saying. Actually we can rely on the International Commission of Jurists, that if the treaty was void it is as if there was no disruption of sovereignty. Territories were transferred by a legislative measure, and we can ask for a revocation of that legislative measures by which these contiguous territories were merged into the Chinese provinces.

R.P. DHOKALIA: So we can say that the identity of traditional Tibet, territorial rights should be restored, the territorial identity and personality.

L.L. MEHROTRA : We can probably be more specific on territorial question and say Amdo and Kham region instead of defining so many provinces. That would cover because only these two parts of Tibet have been encroached.

TASHI WANGDI: In the formulation if we put the three provinces then it will give the proper definition of Tibet.

CLAUDIA JOHNSTON: I just have a question. Will this be appropriate to talk about the habitat dislocation.

VAN PRAAG: The distinction between what habitat covers and population transfer, there is a little bit of an overlap. Population transfer has implications about evictions. There is a report brought out by Habitat International, an NGO on this question. The report does not deal very much with population transfer but some of the consequences of it, which is destruction of homes in Lhasa, the replacement of population groups by Chinese. So that includes evictions. So there is some scope for it. Four the last four or five years we have been working on getting the UN to pay attention to the human rights implications of population transfer. A special official was appointed who submitted two reports, though not outstanding. It is a good ground work on which to build your suggestion and go the next step. The organisation has also organised an international conference on population transfer. This was organised in Baltic state so that people would be aware of the consequences, and a report was published, which describes many such situations around the world. The consensus declaration stated that population transfer violates human rights. It is a useful document that has spoken clearly about population transfer in legal terms.

R.P. DHOKALIA : So we should say that Tibetan territory is illegally occupied and referring to the UN resolutions in this regard we can say that this should be evacuated in pursuance of those resolutions. That means, status quo ante. In the formulation made earlier only this may be added.

LEGITIMACY OF STATE AUTHORITY

3. POLITICAL, SOCIO-ECONOMIC PERSPECTIVE

R.P. DHOKALIA: Now, the question arises: does inviolability of the State permit violation of human rights, genocide, legally? Does political integrity of the state give it a license to deal with its people arbitrarily?

AJIT BHATTACHARJEA: The focus of this exercise should be realistic, as to what will actually be effective against China, not New York, the UN or anywhere else. The purpose of those who are concerned with gaining freedom for Tibet as soon as possible is what will work with China. What will China then do, accept, etc.? If that is at the back of our minds, we will have a more focused approach to this question: What, how will the Chinese react, and what are the various sanctions available — international, Tibetan, and Indian — that can be focused on this issue.

We have all benefited from the clarification of ideas on self-determination and the various aspects of self-determination. The fact remains that these arguments may not impinge very strongly on the Chinese. Today the US or even UN is not in the mood to put any pressure on China for various reasons. If the target for Tibet is independence then obviously the Chinese are going to resist like hell. Is there any way to overcome that? Or can we modify it to maximum autonomy? This would serve this objective more realistically rather listing what should or should not have been done.

R.P. DHOKALIA: Is legitimacy of the State eroded when its people question its legitimacy?

S.C. KASHYAP: No the question has to be resolved before it is eroded.

R.P. DHOKALIA: This question arises in the heterogeneous states, which are multi-ethnic, multi-religious, and multi-linguistic. This country faced the question of Punjab. We are facing the question of Kashmir. Ours is a vast country. The question of legitimacy of authority over people. We are talking of people. Is legitimacy of

authority of the State eroded if a people question that authority? In this are included indigenous people, ethnic people. The explosive situation arose because of the excessive claims of self-determination. This is a matter of anxiety for existing States and anxiety for social scientists also.

S.D. MUNI: One question is built into the larger question. Talking about the erosion of the authority of the State in the event of a people questioning that authority. Now counter question would be which people? How does a people question? If there is a polity which is based on representative government of the participation having on appropriate opportunities of self-expression or expression of opinion if all these avenues are available then suppose ten persons rise up and say that they question the authority of the state do you consider this as a question within formulation of your problem?

R.P. DHOKALIA: Authority is questioned in a variety of ways. For example, recently people of Uttarakhand are out on the streets questioning the State authority, asking for their identity to be recognised as a state. Perhaps what they want is the statehood in the sense of functional autonomy for the self-development.

J.M. MUKHI: They are not questioning the legitimacy of the authority of the State. They are making a demand, that is really different from questioning the legitimacy of authority.

R.P. DHOKALIA: Now their disillusionment and frustration may reach a stage where they could resort to violence. The thinking is going on like this: there are no options between statehood or non-statehood but also autonomy. So, there are three options.

J.M. MUKHI: I don't think these are legal or normative questions these are political questions, because it depends if tomorrow Nani Palkiwallah, Nariman and Soli Sorabjee question the legitimacy of the authority of the State it is meaningless. But if you have a determined group in a precise territorial area having united enough to put up a resistance even though mass of the people don't want, it they may be able to make their voice heard if they have got the sten-guns and the rifles. So these are political questions really.

S.D. MUNI: If state authority and government action. Does every government action represent the authority of the State in that sense? Every opposition would be deemed to be the questioning the authority of the State.

NARESH MATHUR: All we can say is the mere fact of questioning position the thing that something is rotten in the State of Rome. That's all.

R.P. DHOKALIA: In this case what happens is internal self-determination which is one alternative, external self-determination is another possibility. Internal self-determination is to be made functional effective to protect the identity of these various groups and this autonomy.

J.M. MUKHI: That is the kind of question that I asked. I said that there seems to be an overlap if Uttarakhand is being dealt with by the State in any particular manner and anyone in the international community invoice the Universal Declaration of Human Rights or anything and say that there is a violation of the principle of self-determination. The answer would be 'no' because there are limits to what is self-determination in the sense of international law and what is the political ethics within the country.

VIJAY KRANTI: Panchen Lama is no doubt a big issue but it is just an issue. It is one of those hundreds of results which are the consequence of occupation of Tibet. On Panchen Lama we should just mention that we disagree with the way China has acted and we condemn it.

TASHI WANGDI: Number of documents explaining the historical, legal, religious traditional bases for the recognition of Panchen Lama including statements by His Holiness the Dalai Lama are available.

S. RINPOCHE: Searching of a reincarnation is a very difficult job which requires spiritual attainment and performance of various rights and rituals. Generally, most of the reincarnations are searched and then ascertained, after a three-tier examination.

First of all, the previous Lama gives an indication before he dies where and in what conditions he or she will be reborn. That is the first subject to be examined but it does not happen with everyone.

Secondly, they have to ascertain from various oracles or calculations, or other kinds of omens and predictions which can come from various sources, and all these sources shall have to be compiled and examined which will lead to the place or the direction of the birth. After that, a number of candidates, the child born after the death of the previous Lama and candidates who show some kind of sign which leads to a doubt or suspicion, that they could be reincarnation, those children are enlisted for the final examination. This is the general way.

In every reincarnation candidates are recognised through that way. Panchen Lama and the Dalai Lama are the outstanding teachers of the Tibetan Buddhist tradition. The first Dalai Lama was a direct disciple of the Tsongkhapa the founder of Gelegpa in the 14th century and he established the Tashi/Lhunpo Monastery. His Reincarnation was not searched. At that time the searching of the reincarnation was not very

popular and his Reincarnation came automatically, one boy said, 'I am the reincarnation'. He studied and lived in the Tashi Lhunpo monastery and later on he was invited by the Drepung Monastery at Central Tibet and become head of it. Another scholar became abbot of Tashi Lhunpo and he became the first Panchen Lama. The third Dalai Lama received the title of Dalai Lama and since then he became the permanent resident of Drepung Monastery and the Panchen Lama becomes the head of the Tashi Lhunpo monastery. Invariably when Dalai Lama dies, Panchen Lama used to take charge for searching the Dalai Lama's reincarnation. When Panchen Lama dies, Dalai Lama invariably would take charge of searching or ascertaining the reincarnation of Panchen Lama. That comes down right from the 14th century and it is still continued. The present is the 11th Panchen Lama and the present Dalai Lama is the 14th Dalai Lama. Our 'Priest-patron' relationship with the Manchus was very confusing and it can be interpreted and misinterpreted in many ways. In our perception it was all help and assistance given by the Patron. Exactly what Patron means here is *yajman*. The Dalai Lamas used to be *purohit*, and all the emperors of Manchu used to be the *yajman* of the *purohit*. This is exactly the Sanskrit terms, the *Dayak* and the *Poojniya*. Cho-Yon exactly means that *yundak* is *dayak* who gives offering and Cho-Nas is the person who receives the offering. This should have been the translation of the Cho-Yon relationship. That relationship many things are politically unclear which is now being misinterpreted by Westerners and Chinese in their own way, but in our own perception, it is entirely different.

The administration of Government became weak after Gorkha War, in 1792. During the Gurkha War Tibet government sought Manchu military assistance. In the beginning they refused but agreed second time to extend military assistance. In the treaty with Nepal after the war both Nepal and Tibet Governments acknowledged the supremacy of Manchu Emperor. The Nepal Government and Tibetan Government equally agreed to give gifts to Peking in every four years. Tibet Government agreed to allow passage and offer assistance to Nepal Government's delegates for going to Beijing to hand over the gifts. This is interpreted as proof of Chinese supremacy and sovereignty over Tibet. But this supremacy should be equally be applicable to Nepal also. There is no difference in their treatment to Tibet and Nepal in the treaty.

After that the Chinese Commander observed that the administration in Tibet is very loose and the country has not been properly managed. They suggested 29-points how to reorganise the administration of Tibet Government. In that they suggested that the decision of reincarnation of Dalai Lama and Panchen Lama should be drawn by lottery from the *Gold Vessel*, and that lottery should be taken out in presence of the spiritual head. The job should be performed by *Amban*. *Amban* used to be a Manchurian appointed by the Manchu Emperor and he should pick the name from the vessel. This however was not dependent on approval or recognition of the Chinese Emperor. Candidates for the lottery were to be decided by the search committee consisting of spiritual persons, who recommended three,

four, or five names these names are to be put in the golden vessel and the Amban would come and pick out one name and that would be the final. It did not require further comment or approval. The Chinese Government is misinterpreting the process of final choice of Dalai Lama and the Panchen Lama as their rights of approval. This is misrepresentation and it is not mentioned in the 29 point recommendation. All the 29 points were not adopted faithfully. Many Dalai Lamas were recognised thereafter, but only two or three were chosen from the golden vessel. The 10th Panchen Lama was recognised in 1951, the Government of Tibet suggested that we may draw the lottery from the golden vessel but Beijing Government did not agree and said that there was no need for lottery as all the attributes were found in the present candidate and Dalai Lama should recognise him. Dalai Lama agreed to recognise. The tenth Panchen Lama without draw from golden vessel was recognised.

So these are all contradictory actions and it does not have much importance, whether they are drawn or not drawn from the golden vessel. But the final say in the recognition of Panchen Lama is of Dalai Lama, he is final and full authority till now.

ASGHAR ALI ENGINEER: Transfer of population is a very serious matter. I was told that the Tibetan population is six million whereas Chinese population in Tibet is more than eight million. This is a serious matter and we can pressurise China through UNO, and heads of some Governments to make a constitutional provision to stop this transfer of population. It does not mean we are recognising Chinese position over Tibet, but to put a stop to this till the matter is finally settled through dialogue, whether resulting in sovereignty or autonomy. The constitutional provision should be made, as it is in India in respect of Kashmir, Himachal Pradesh, Nagaland, etc., that people should not be allowed to acquire property or permanently settle in Tibet. This is open resulting in serious erosion of Tibetan identity. This has become a big point of dispute in Karachi which is the capital of Sind, where the population of Sindhis is just seven per cent and 93 per cent population are non-Sindhis. That is why, this serious conflict. In order to avoid this kind of violent expression of conflict in future, such provision should be insisted upon until the problem is finally solved.

T. N. CHATURVEDI: The motivated imbalance of population in China is being done so that it becomes easier for the Chinese to claim their presence in Tibet. This problem would lead to serious disputes in future like Soviet occupation of the Baltic states, or what is happening in Karachi. This point is to be emphasised because the identity and Tibetanness is a crucial point on which the whole argument of Tibetans is based upon. This problem is grave, and has many other implications. This transfer of population is something which has to be taken note of by the international community and has to be highlighted.

R.P. DHOKALIA : The right of self-determination of Tibetan people will be adversely affected if the balance of population is disturbed. In order to enable Tibetan people to attain their self-rule, self-government, self-development, it is of very great importance that steps be taken to restore to the old situation.

L.L. MEHROTRA: I have pointed in my paper that the people of Tibet have become a minority, in their own country thanks to the massive presence of Han Chinese both military and civil, which has multiplied year after year in an effort to supplant the native population which amounts to an act of genocide.

C. MAPRAYIL : In the formulation of the general statement we could also add the racial discrimination aspect.

NARESH MATHUR: The treaties, governance and instruments which stands violated by these acts of the Chinese should be named specifically.

R.P. DHOKALIA : List of serious abuses of law has also been drawn by the Amnesty International.

interference in the practice and teaching of Tibetan Buddhism and restrictions on freedom of religion.

a lack of process of law, a lack of an independent judiciary, loosely defined and oppressively enforced criminal and security laws, denial of rights of freedom by association and freedom of assembly, torture of detainees and prisoners and the practice of cruel punishment in a harsh penal system,

oppressive censorship obstruction of free flow of information and undue limitations and freedom of expression,

limitations upon free movement both within and outside Tibet,

forced sterilisation and unconsensual abortions,

unequal access to indiscriminate housing, education, health, employment and political office and cultural right.

Such violations of fundamental human rights are contrary to international law. The PRC is the State responsible for such violations, these violations should cease forthwith. This list highlights the abuse of individual, civil and political rights.

J.M. MUKHI: This demographic aggression has taken place. We are told that there are eight million Chinese. Now you can stop a violation. How do you undo, how do you unscramble the egg? Are these eight million Chinese to be sent back? Are they be allotted a partitioned portion of the territory to live in because this will again pose another human rights problem.

R.P. DHOKALIA: Dalai Lama and the Tibetan refugees to whatever country they have gone have a right to return. Dalai Lama has a right to return to his homeland.

T.N. CHATURVEDI: There is a bit of difference. They are not the refugees in that sense. This is a part of a planned motivated effort mounted by a Government to disturb that population equilibrium and this is the kind of a situation which was in the Baltic. The only question is that the Tibetan Government as such at that point of time does not create any difficulty or human problem. But only having said that eight million have come and they again become the refugees. You can misinterpret that. But they are not the refugees. Refugees should be for either some ideological pressure or operation or it may be for religious reasons or as a consequence of flood or some other calamity. This eight million or something is not the part of that kind of a system. The two situations should not be equated.

L.L. MEHROTRA: Describing the Chinese presence in Tibet in any capacity, military, civil or otherwise is a phenomenon so completely and totally different from the refugee phenomenon that the word should not be used. It is totally irrelevant because people rooted out of their political, social, cultural and economic moorings and thrown out of their territory to live in another are refugees. The Chinese who are there in Tibet do not belong to that category and that definition of people by any definition whatsoever.

VIJAY KRANTI: This question of population transfer has another significance which we might confront a few years later if we succeed in insisting on a plebiscite. If in future there is a plebiscite inside Tibet, the question would be as to who is qualified to participate, and China is going to insist that those who are living in Tibet are Tibetans and they will vote. So obviously right from the beginning the purpose is defeated. So demand of sending back these people should be on record.

Another point is about, the undoing of reorganisation of Tibet. Tibet had three regions, Amdo, Kham and the Central Asia. And practically what China has done to confuse the whole world, it has taken away Amdo and calls it Qinghai. Kham is gone already. Now it is only U-tsang which they say is Tibet. In case there is any dispute, they will say, here is Tibet which is U-tsang, which is less than half. We should take into consideration these two things, undoing of reorganisation of Tibet and sending back of those people who have been sent there for permanent migration.

VAN PRAAG: We should make it clear that population transfer is in violation of the Geneva Convention, because the territory is occupied, and also it is in violation of human rights. The UN Sub-commission for the Protection of Minorities has two reports on population transfer as violation of human rights, which undermines the right to

self-determination. In view of this, China should stop this policy and action should be taken to restore the rights of the Tibetan people.

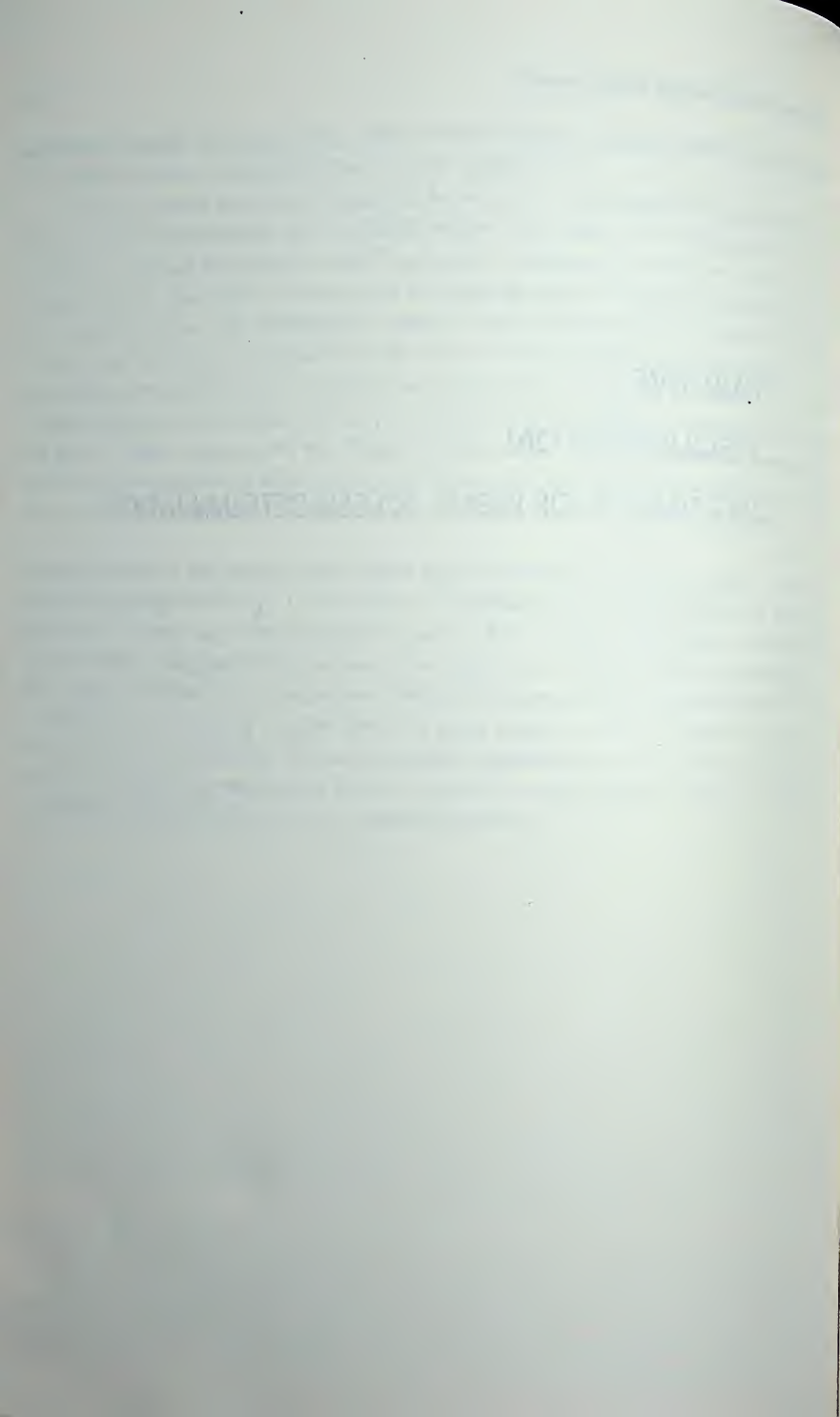
This forum should not actually prescribe the means of what should happen because first, it is a very delicate and a difficult matter. Secondly, it is not right to try to make the Chinese population inside Tibet unduly concerned at this time. Also this is a decision for the Tibetan Government to make as part of negotiations, as a part of restoration later. His Holiness has made it clear that he doesn't want to in any way have the Chinese population be hurt or take revenge against them. It is something for the Tibetans to decide how as best they are going to handle it. Some of the statements were made several years ago that those Chinese people who wish to live in Tibet, comply with the Tibetan culture and become Tibetans, there may not be any objection to their staying but those who do not want to adapt would have to leave. It is for the Tibetans to decide how to resolve their problem.

VIJAY KRANTI: I am sorry, I really don't agree with what is being said. We are here discussing two things. One is what a saint-like-Gandhi Dalai Lama is saying, the kind of concessions he is ready to give to the Chinese who have come there without their willingness is his business. The aggression that has been committed on the people of Tibet, has to be undone. What Dalai Lama feels is his business. What concessions he is going to give when he goes back provided Tibetans give him that authority is his business. We are discussing aggression by one country on another and its undoing and we have to be very specific on those issues. Let us not discuss what Dalai Lama is going to do or give concessions.

PART FIVE

DISCUSSION ON

LEGITIMACY OF RIGHT TO SELF-DETERMINATION



LEGITIMACY OF RIGHT TO SELF-DETERMINATION

1. THE HISTORICAL PERSPECTIVE

L.L. MEHROTRA*: Tibetan people have a common historical tradition that goes back to several centuries before the birth of Lord Christ. Apart from the general belief that they are descendants of Avalokiteshvara or Chenresi — an incarnation of Buddha, represented by His Holiness the Dalai Lama, Tibetan historical works like *Debsngon*, *Dga'ston* and *Bu-ston*, speak of their ancestry going back to the times of the Mahabharata war in India. I am trying to refer to the Indian connection in order to prove that their historical connection with China is of a much later antiquity, I am not trying to be chauvinistic in projecting the link with India. It is very pertinent to know about their cultural and historical links with India and how old and ancient they are as per records. *Dga'ston* and *Bu-ston*, are two historical works which give you a deep insight into the history of Tibet, they speak of the ancestry of the Tibetan race and these are Tibetan works written by Tibetans. They speak of their ancestry going back to the times of the Mahabharata war in India. I have tried to take some extracts, I will highlight them very briefly. According to this tradition a king or military commander named Rupati of the Kurava army fled to Tibet with his followers following defeat in the epic war with the Pandavas. This claim is based on a letter written by an Indian Pandit Shankarapati or Dege Dakpo in Tibetan, about a hundred years after the death of the Buddha in which the learned Pundit describes the migration of Rupati and his followers into Tibet. (*Tibet — A Political History* by Tsepon W.D. Shakapa, p.5).

Secondly according to the same Tibetan source, Tibet had an almost unbroken line of kings from Nyatri Tsenpo, the son of a noble family of Magadha in India, known to Tibetans as *Mak Gyapa*. *Mak* is Magadh and *Gyapa* is king, Magadh Raj or *Makgyapa*, goes back to the second century B. C. He is said to have wandered into Tibet and accepted by its people following the Bon religion as their king, in the belief that he had descended from the sky to rule over them. According

* This presentation was made at the Workshop held at Seriska in 1994.

to this tradition the arrival of Nyatri Tsenpo also marked the dawn of a new civilisation. They came out of their cave dwellings and built their first house at Yumbulagang which could be still seen in central Tibet until the departure of His Holiness the Dalai Lama in 1959.

This dynasty gave birth to many great kings, including the most famous of them Songtsen Gampo, the 32nd in line of the founder king, who not only unified Tibet and gave it 10 moral principles and 16 rules of public conduct almost like Ashoka, but established matrimonial alliances with China on the one hand and Nepal on the other.

This line of kings organising with Mak Gyapa Nyatri Tsenpo sustained an unbroken connection with India from generation to generation seeking religious, spiritual and cultural inspiration from there. For example, Tho-Ri Nyan Tsen (b.173 AD) is learnt to have received a Buddhist scripture called *Nyenpo Sangwa* which Songtsen Gampo got translated from Sanskrit into the Tibetan language four generations later. The scholar who achieved this feat for the king was Thon-Mi-Sambhota, who was sent to Kashmir in North West India, where he studied Sanskrit and evolved a script for the people of Tibet out of the Brahmi script of India. He translated many works to facilitate the introduction of Buddhism in Tibet and got currency notes printed in Tibet to celebrate the arrival of this sacred book (233 AD). These events belonging to the common historical tradition of Tibet, I am talking of the common historical tradition through the centuries, are engraved in Tibetan consciousness and constitute major landmarks in their evolution as a people with a common heritage.

Though having constant interaction with two major civilisations, namely, the Indian and Chinese, throughout history the people of Tibet have retained their identity in so much as they neither belong to the yellow Chinese race nor the Indo-Aryan stock, and the form of Buddhism that they practice known as Lamaism has a very special flavour of its own. It is based on the theory of incarnate Lamas of whom his Holiness the Dalai Lama is the most important. It is a peculiarly Tibetan form of Buddhism combining many local streams with a multiplicity of Buddhist and Tantrik traditions from India. Lamaism included elements from the Bon religion as well, which was in practice in Tibet before the introduction of Buddhism. Tibet has several Tibetan Lamaist sects of its own, but principally the following:

1. The Nying Ma Pa or the Red Hat sect which traces its origin to Guru Padma Sambhava, who came from India during the reign of King Trisong Detsen (755-797).
2. Ka Dam-pa, a sect which owes its origin to saint Atisha Dipankara, a Bengali saint, who came to Tibet from the Vikrama-sila monastery in Magadha (Bihar).
3. Kagyutpa sect that follows the tradition of Tilopa, Naropa, Marpa (1012-96) and Milarepa (1041-1123).

4. Sa-Kya-Pa, which derived its name from the Sa-Kya monastery built in 1073.
5. The Ge-lug-Pa, the yellow hat sect to which the Dalai Lama belongs and which was founded by Tsonkhapa (b.1357).

All these sects are very special to Tibetan Buddhism and they impart to Tibet a personality of its own which has now lasted more than a thousand years.

Now this aspect and this thing distinguishes Tibet from anything including Kashmir which is a multilinguistic, multiethnic and multireligious state. So we need not have any doubts or fear about it. In regard to the Cultural homogeneity and religious affinity of Tibet, I would like to highlight two facts here in particular:-

One, it is Buddhism which permeates every aspect of Tibetan life. Its central doctrine is *ahimsa* and the Dalai Lama is carrying out his fight for independence of Tibet in a very non-violent manner. There are no terrorists, no terrorist interventions, here, there are no terrorist groups being trained outside, there is no insertion of ammunition or arms or military ware into Tibet by the Dalai Lama or his people. The entire fight for Tibet's freedom and restoration of its original status is being conducted at least today on the basis of *karuna* or compassion, of non-violence and the highest understanding of the highest international principles including the principle of the peaceful resolution of all disputes and all issues.

Secondly, the special character of Tibet is borne out by the fact that it is a land of 6500 monasteries, and there is no other part of the world where nearly 1/3rd of the population would be in one way or the other directly associated with the monastic order. So deeply inculcated and ingrained was their love of peace and of the message of Buddha or *karuna* that nearly 1/3rd of Tibet's 6 millions population lived in monasteries and was sustained in its religious and academic pursuit by the rest of the population, imparting to the nation a homogeneity and a tension-free ambience that did not have its peer anywhere in the world until the communist Chinese onslaught came with the mission of its fold.

I fully sympathise with what Prof. Rinpoche has said that Tibet had a very special mission to offer. That is to preserve the spiritual heritage of India, the best India has had to offer exactly in its intrinsic form and therefore it imposes a great responsibility on the people of India and those who represent India in the country inside and outside to preserve that heritage. We have to see not only how to restore Tibet to Tibetans, and the freedom of Tibet to the Tibetans but how we can work to bring that heritage back to them, which is under such a severe onslaught, most non-violently since non-violence is the choicest jewel of Tibetan civilisation.

Again in respect of Kashmir the question of linguistic unity does not arise because it is the people in Jammu and people in Ladakh, people in Kashmir valley, who comprise the Indian State of Jammu & Kashmir. All three of them have characteristics of their own and languages of their own and dialects of their own. In the Muslim community also, as Prof. Muni was mentioning to me, it is not just one language. It

is a multiplicity of languages, it changes at every 10 Kms. Kashmiri is spoken differently in some form or the other in different parts of Kashmir.

While in the case of Tibet you see there is a common streak of Tibetan language running through the length and breadth of the country — the same language is understood and spoken throughout the length and breadth of the territory with minor dialectic variations. The people of Tibet, of all its regions speak one language which they called Bo-Ke except for intruders from outside. There are some intrusions and today the Chinese intrusion is very heavy which has overwhelmed the local population there. As of today the Chinese has become the major language of Tibet. That is another aspect of the question you have to examine, if that amounts to genocide. I am not reflecting on that, I am first establishing whether these people are a "people" within the framework of the UN resolutions to which the right of self-determination will apply and they are with a one common language which is Bo-Ke. The language has one stock but several dialects differing from region to region. All of Tibet's literature is extremely rich and which used to be extremely well preserved in monasteries. It derives itself from Buddhism and from secular works in Sanskrit and Pali. Their script is also derived from India. It is safe to suggest that Tibet's religious, spiritual and literary inspiration is all Indian. However there are some other artefacts of Tibet's culture such as food and the way it taken with a heavy influence of Chinese civilisation on some them.

Tibet is one territory with a very well defined territorial dimension from North to South and from East to West and which is known to every Tibetan anywhere in the world. Its parameters are known and they have not been in dispute. Even where there had been border conflicts between China and Tibet, immediately each side knew where they had stepped out of those borders. That was also one of the points that we were making to the Chinese that although our border with Tibet not demarcated which we may do right now, it is generally well-known that is the points where these borders would lie. Tibet's geographical expanse has not been in doubt at all.

With an area of 2.7 million square kilometres, $\frac{3}{4}$ th the size of India, Tibet is located on the roof of the world and constitutes the heart of Asia. Its average altitude is 4000 meters. The Himalayan range guards the southern region like a silver garland. With the highest mountains of the world, the highest plateau, ancient sylvan wealth, and deep valleys, Tibet is world's most important watershed and father to some of the great rivers such Machu (Hangho), Drichu (Yangtse), Tsangpo (Brahmaputra), Senge Kabab (Indus), Phungchu (Arun), Gyalmo Mgulchu (Salween) and the Zachu (Mekong). Some of the worlds most spectacular lakes adorn iis breast like Mansarover and lake Kokonor, the total number surpassing 2000. The territorial bounds of iis three regions Amdo, Kham and U-Tsang are traditionally well defined. Many part of the region have been incorporated into Xinchiang, Gansu, Sichuan and Yunan provinces of China and people have stopped thinking about it. What we conscious of and what we consider as outrage is the sweep of the Chinese across the Himalayan borders. But very little today is talked about the lands of Tibet

that have been incorporated by China and have been declared as parts of their border provinces. Now what kind of autonomy is this even under the Chinese constitution, when you territorially take away a part of what you call an autonomous state and incorporate it scientifically not as part of just one province but four provinces. All the bordering provinces of China have profited on the flesh and territory of Tibet. However, does that also not prove where China's traditional borders lay?

The people of Tibet share the vast resources of its rich natural mosaic as one people. The country has seven vegetation zones with an average rainfall which varies from 100 mm in the north to 1000 mm in the south-east. In 1949 its ancient forest covered 221,800 sq. Kms of its territory, nearly 1/10th of the total, the highest concentration being in the southern part. It is extremely rich in tropical Montana and sub tropical coniferous forests. The backbone of the country is animal husbandry dominated agrarian economy. Its grassland is 70% of Tibet, the cropland is only 2% but extremely productive. The principal crops bring riches along the river valleys.

Tibet's exploitable hydro-power potential has been rated at 250,000 mega watts. Generally a 600 mega watt plant is supposed to be a very large plant for electricity. Now this is a 250,000 mega watt water resource. It also has the world's highest solar energy potential next only to Sahara's. It has proven deposits of 126 minerals with a significant share of the world's lithium, chromite, copper, borax and iron. It also has rich uranium reserves, one reason why the Tibetans are being exploited by the Chinese for their nuclear purposes. Its bio-diversity includes endemic animal species like antelope, wild yak, giant panda, snow leopard, tiger and black bear. It is not just China that has panda, Tibet has the giant panda. Tibet's huge natural resources have trans-border and trans national impacts. By this I mean, all the seven rivers which I mentioned flow out of Tibet into many other countries including India and other countries of the Indian sub continent Burma China itself and South East Asia. Tibet enjoys not only proper conditions for a viable economy for itself therefore, but its sustainable development is of consequence to all the countries surrounding it. What happens to Tibet and to Tibet's ecology and Tibet's natural resources is of concern to each and all around it and most of all to us in India. The Chinese nuclear weapon activity in Tibet is not only a threat to Tibet's environment but to that of all its neighbours, apart from the political ramifications of that nuclear activity on Tibet itself.

The people of Tibet are certainly far more than a mere association of individuals within a state if that be a criterion to entitle them to the status of a people. They used to comprise a cohesive body of people numbering more than 6 million, speaking a single language, following a single faith almost in the entirety, having a common historical tradition and enjoying a viable economic life for centuries together, within the bounds of what was known as Tibet in the heart of Asia. This cohesiveness has got disturbed by the induction of 7.5 million Chinese in a land of 6 million Tibetans, rendering the Tibetans a minority in their own land. Now this is the impact

of the foreign presence in Tibet and it makes it impossible for them to be masters of their destiny again, call it colonialism or genocide or whatever.

The Tibetans also have other yardsticks for self-determination such as 'having consciousness of being a people'. Even Tibetans who have been forced to live out of their motherland for nearly half a century and are distributed throughout the globe are deeply conscious of the fact, that they are a distinct people from a distinct land, and we have seen it this morning in the two statements made. They are deeply conscious of the fact that they are part and parcel of the Tibetan race, Tibetan traditions and Tibetan history and that they want Tibetan independence restored to their land. Moreover, in order to qualify as a people within the definition of the phrase as used in the UN Charter, the Universal Declaration of Human Rights and similar other documents of universal application, if it is necessary to have institutions or other means of expressing common characteristics and an identity of their own, there is no dearth of them in Tibet. The Dalai Lama himself is an institution par excellence that is unique to Tibet and embodies in itself the identity of the Tibetan people as a whole symbolically. The Tibetans express their common characteristics also through the monastic orders peculiar to them as detailed above, the language they speak, the religious traditions they follow and the costumes they wear throughout the length and breadth of the territory called Bod (Tibet). They are totally dedicated to fundamental human rights and peoples rights. I don't know of any other people who are so intimately dedicated to the principles of human rights as the people of Tibet and we know that by the example of the Dalai Lama himself. And they have modelled their administration, as far as I know, on purely democratic principles today, seeking an end to the feudal characteristics of their society. So the Chinese need not speak of the feudal status and feudal conditions of Tibet, to which they have brought the light of the day. Under the leadership of the Dalai Lama in exile they have adopted a Constitution under which even His Holiness the Dalai Lama the sovereign of their hearts and the head of their state by being an incarnation of Chenresi (Avalokitsvara) will rule by the will and consent of people, through democratic institutions. The Constitution gives them the right to remove the Dalai Lama if they so wish. As a people they are also quite willing to submit themselves to a referendum any time it is permitted. Their keenness to preserve their identity and culture is more than evident, ever since they have seen these threatened with the advent of communism in China, and the advancement of Chinese military forces into Tibet. They have resisted the process with all their might and have risen in revolt a number of times since 1951 wherever and whenever they could. Almost without exception the Tibetans don't consider themselves as Chinese. This is different from the people in Manchu, this is different from the people in Canton, this is different from the people in Yunnan, different from people in many other provinces of China. The Tibetans do not consider themselves as Chinese. I cannot speak for Sinkiang, because I have not been there, therefore I am not connected to their aspirations.

But as far as I know, without exception, Tibetans do not consider themselves Chinese. This is again so very different from the case of Kashmir. Kashmiris have historically treated themselves as Indians as the people of Gujarat in the West, Kerala in the South and Orissa in the East have. But no Tibetan ever considers himself as Chinese. I have brought out through my remarks how distinct the question of Kashmir is from the question of Tibet and the personality of Kashmir how distinct, and we need not confuse the two, but it would be good to understand the points of distinction between the two situations.

B.C. NIRMAL: The status of Tibet can be examined from different perspectives of statehood, sovereignty, historical claims, suzerainty and political nationhood. Two important dates are very significant for examining the status of Tibet.

1. 1911, when Chinese troops were evacuated and Dalai Lama made a formal announcement about liberation of Tibet.
2. 1950, when China took military action in Tibet.

Let us examine from this point of view what was the position of Tibet before 1911. Mr. Mehrotra in his paper convincingly shows that the terms such as suzerainty and protectorate were used by scholars to describe the priest and disciple relationship was grossly inadequate. Vassal state is a state which retains its internal sovereignty and its foreign relations are conducted by the suzerain state. In order to establish this kind of relationship there must be a treaty or agreement between the two. Is there any evidence to suggest that during its entire history Tibet recognised the authority of the Chinese Government to conduct its external relations? Now this is the criteria.

Secondly, in case of suzerain and vassal nation-states a treaty to which a suzerain power is a party is also binding on the vassal state. Is there any evidence to suggest this whether Tibet ever agreed to abide by the treaty concluded by China? Thirdly, in case of declaration of war by a suzerain state the vassal state is also considered involved.

Finally, in case of an armed conflict between a suzerain state and a third power the vassal state cannot remain neutral. In China's war with Japan in 1942 Tibet insisted on its neutrality. There were many treaties which have been examined by the learned author of the paper which also show that there was no suzerain and vassal relationship between the two countries.

Now when you say that there was a tributary relationship it means that you are accepting that a tributary and the dominant state both had separate identities. This fact alone cannot establish China's claim that Tibet is an integral part of China.

On the establishment of People's Republic of China, Tibet was invited to join the Republic. If Tibet was integral part of China what was the need to invite Tibet to

join the Republic? To my mind, there is no legal support to justify China's assertion of suzerain relationship.

We have discussed the period 1911 to 1950 but what is the criteria for a state. According to convention there are four elements: people, territory, government and sovereignty, internal sovereignty and external sovereignty.

Internal sovereignty: There is evidence to suggest that Tibet had control over its territory.

External sovereignty: There are sufficient instances to suggest that Tibet had a certain measure of international personality and it conducted external relationship with neighbouring countries. Membership of United Nations is not necessary, that is relevant but not decisive test of statehood. For example, Switzerland is not a member. What about Nepal? Did Nepal have extensive external relationship in those days? That may be an important element but not the decisive criteria.

Statehood: From 1911 to 1950 Tibet fulfilled the minimum requirement of statehood. If we accept this proposition then two consequences flow. First, we can find out striking similarities between the cases of Kuwait and Tibet. Both countries came under the illegal occupation of China and Iraq, respectively, at different stage of point. While Kuwait was fortunate to get the support of the superpower—the United States, under whose leadership the Security Council authorised the military action and they liberated Kuwait. The same action could not taken or initiated in the case of Tibet. Meanwhile, because of the Sino — US Agreement China has emerged as a major state power and as a member of the Security Council it is in a position to thwart adoption of any resolution on Tibet. Here we should make distinction between entitlement and enforcement. Despite all these constraints we feel that Tibet was an independent State on a particular date which the Chinese troops invaded the territory.

In this context the demand for self-determination is not the case of secession. This is a case of liberation from illegal colonial domination. Tibetans are not demanding the creation of a new state for themselves. They are just asking for regaining their lost territory, regaining their statehood. We can make its comparison with situation.

In this context we can also take cognisance of the continuity thesis advanced by Baltic States who have recently exercised their right of self-determination.

The Baltic Republics insist on what is called the 'continuity thesis'. They have taken the view that they have recovered the statehood that existed during the inter-war years which was suspended since the illegal covert occupation in 1940. Historical and political facts support this continuity thesis in case of Tibet more than the Baltic.

L.L. MEHROTRA: Another question was asked, whether any effort was made by Tibet to have itself represented at the United Nations? One legitimate answer given

is that Tibet is such a cloistered society with a spiritual mission that it did not concern itself much with representation here and there. I am afraid the Tibet of 1913 was not such an entity which would not look forward to international representation, nor was Tibet of 1947, or 1949. That is Prof. Muni's point and in the legal framework what Prof. Nirmal has hinted at is the question of practical possibilities. The United Nations was formed in 1944-1945. The Charter established China as a permanent member, and Kuomintang represented the Chinese authority at the United Nations with the right to veto. Anytime Tibet would have suggested that they wanted to be there, the Kuomintang would have vetoed that. China was represented as one of the largest powers of the world and a participant in the war, and given a permanent status. Tibet could not in those circumstances apply for membership of the United Nations. That would have been vetoed.

S.D. MUNI: I would still say, it would have been better to make an effort for admission.

L.L. MEHROTRA: I agree, we are saying this on hindsight.

NARESH MATHUR: Was an application made for admission to the League of Nations and it was rejected.

S.D. MUNI: It is not only a matter of hindsight because many nations did apply and their membership was not accepted, and the debate continues. It should have been known to the Tibetans that this was happening.

L.L. MEHROTRA: The Tibetans knew of the practical realities of the situation also. The practical reality of the situation was that China would not allow the application to come to the floor. Tibet should have still applied. I am not saying that it should not have applied.

B.C. NIRMAL: I have heard that an effort was made to move application for membership.

L.L. MEHROTRA: It could be possible.

S.D. MUNI: I draw your attention to what Prof. Rinpoche said that Tibetan delegation in the United States of America was persuaded to make an application. Came back the reply from Lhasa, that they don't need that. I think at that time Lhasa's instruction should have been "go ahead", and see what happens. If Lhasa decided not to put in an application there must have been some constraints which, at least I am not aware of.

L.L. MEHROTRA: That is a point to be examined. What I am saying is that in terms of practical politics with China being a permanent member of UN and having the right to vote and its legal and constitutional position always remaining that Tibet is an integral part of China it would not allow the application to be considered. That could have been the reason why Lhasa would have refrained. This is a presumption. I wanted to make the point that we should be clear of the possibilities that a country is facing at any point of time when it wants to take any step in international affairs. Similarly today China is a permanent member with much greater clout than China has exercised at the United Nations at any point of time since the birth of the United Nations. So we have to have a historical scenario before us.

J.M. MUKHI: It is said that, the Kashag appealed to the British, the United States and the Indian Government to support the country's application for membership of the United Nations. The Kashag also announced that it was sending a special mission in this connection. The two western powers and India advised Tibet of the impracticability of the proposal as the Soviet Union and the Republic of China, both permanent members of the Security Council would be certain to veto the application. They also proposed the mission be suspended as all over action by or on behalf of Tibet might well precipitate the Chinese reaction in support.

CYRIAC MAPRAYIL: There is a kind of consensus here that human rights approach is perhaps our starting point and we should be directing our thinking towards practical and implementable strategies which can be earmarked, implemented and reviewed and make progress to move forward.

Tibet is a cause one can be proud to be associated with and Tibetans badly need our support. India has in fact misled the international community, covered up the Chinese to do what they wanted to do, and it is that kind of hypocrisy and cowardice the Indian public has overcome and is supposed to be now conveying to the Indian Government. India has a unique role to play partly because we have covered up and allowed the Chinese to get away with it for so long. Our strength is our democracy. Our public opinion and our strength is that we are concerned about human rights. It is not a favour that we will be doing to the Tibetans. It is a commitment which we have towards the international community if we want to be part of it. India has a major role to play and if it did assume that role other countries should follow the lead. If Indian Government recognised the Tibetan Government formally and officially, many small or big countries also will follow suit. I think that is one practical way and we need necessarily a BJP Government to do that. That is the Indian public opinion.

From the historical perspective if Tibet should belong to anybody, it should belong to India. If you give me a chance it can be established that if Tibet should belong to any country it should belong to India. We have enough historical links, enough

philosophical connections, enough artistic and cultural connections. I can't understand why those Indian leaders did not speak their mind. If they put it to the Indian public, that is what we would have said. If it is not going to be a part of India it should not belong anybody. I think Tibet should belong to Tibetans.

Some historians quote the British Government's policy towards Tibet as arguments to justify Chinese claim over Tibet. The British and the Chinese were colonialists, partners in crime. What is the logic in talking about the British policy today of what the British policy was at the time of the second world war? British Government in fact has been conspiring with another empire builder, the Chinese Government that Tibet could belong to them. British Government in fact thought that Tibet could be a part of the Chinese sphere of influence and British obsession was only to contain the Russian empire. They did not want to create an additional enemy by being insensitive to the Chinese and it was not envisaged that the Chinese will expand to the Indian sub- continent. So, that was only in that context. There are people today however who think that British policy then was an adequate evidence to justify the Chinese claim that Tibet should be part of the Chinese empire.

After the fall of Manchu empire, Tibet had nothing to do with the Chinese until the annexation and occupation by the Chinese Communist Government. In the course of last 50 years China has undergone so much change and transformation that any understanding or link that might have existed has also disappeared. The Chinese can not claim to have had any understanding with the Tibetan Government or the Tibetan community because it underwent so much change with the Kuomintang and subsequently with the communist government.

The other observation I want to make is that the Chinese Government is indulging in double standards. While the Indian Government was being asked by the Chinese to review the colonialist approach it has inherited from the British India, review its strategy towards borders and its strategy towards the neighbours, the Chinese Government to suit its argument is justifying its colonialist claim to Tibet and its *status quo*. That is double standard. That has not been exposed at all. Indian Government, and people should be doing it. It is amazing that it has not been done. What is puzzling is that India that was a victim of colonial subjugation for centuries could not sympathise in a better way, in a more clear way with another victim which was Tibet and again what is puzzling is that even now we are so cautious and sure what to do and have to clear our conscience to the international community, let alone to the Tibetans and to all our neighbours who are close to us.

LEGITIMACY OF RIGHT TO SELF-DETERMINATION

2. LEGAL PERSPECTIVE

L.L. MEHROTRA: Those who would have read my paper would have seen how we have proceeded on from the position that the United Nations had taken on the question of the right of self-determination of the people, and then proceeded on to the right of Tibetan people for self-determination and confirm its applicability as a doctrine at that point of history, i.e. 1950/1951 to the people of Tibet taking into account their historical status.

Speaking in the name of the people of the United Nations, the Charter begins thus:

We the people of United Nations determined to save the succeeding generations from the scourge of war,... and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained.... have agreed to the present Charter of the United Nations.

Chapter 1 of the UN Charter dealing with purposes and principles, defines one of the purposes as follows:

To achieve international co-operation and promoting and encouraging respect for human right and fundamental freedom for all, without distinction as to race, sex, language and religion. (Art. 1.3)

There is this fundamental right and fundamental freedom of each individual expected to be promoted and protected under the UN charter, by the member-states and before they become members they undertake this obligation on themselves.

The resolutions on Tibet that were passed by the UN General Assembly in 1961 and subsequently make it very clear that the UN was addressing itself to the question of self-determination of the people of Tibet.

The UN General Assembly Resolution 1723 (XVI) New York, 1961, *inter alia* states as follows.

The General Assembly solemnly renews its call for secession of practices which deprives the Tibetan people of their fundamental human rights and freedoms including their right to self-determination.

We do not have to go anywhere to assert that the Tibetans are entitled to their right of self-determination. In the eyes of the General Assembly and therefore the international law, within the premises of this very resolution 1723 of the year 1961, the Tibetan people are entitled to their right of self-determination, that right should not therefore be questioned. It is not questionable in the eyes of the international community. This itself is a very significant part of the UN procedures and resolutions it has passed on the question of Tibet.

As a matter of fact the Universal Declaration of Human Rights was proclaimed by the General Assembly as a "common standard of achievement for all people and all nations." Both the international covenant on civilian and political rights and the international covenant on economic, social and cultural rights commence with a common article as follows:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic social and cultural development.

This means that so long as the people inhabiting the geographical regions traditionally known as Tibet, qualifies to be referred as a people they will have the right to self-determination unquestionably under the UN dispensation.

There is no need to compare this question with the question of Kashmir and all that. The pronouncements are all here right in the UN resolutions themselves as far as the question of Tibet is concerned. Prof. Muni has very kindly drawn attention to this note where an attempt has been made to define who is a people.

I have not tried to establish any definition of my own as to who is a people but I have taken two highly reputed sources to define who is a people. One is the Committee of Experts established by the UNESCO for this specific purpose which met in Paris in February 1990, very recently and of great relevance to us, which has made a serious attempt to define "a people", says that *inter alia*:

A people for the rights of peoples in international law including the right to self-determination has the following characteristics :-

- (1) A group for the rights of peoples in international law including the right of self-determination should have (a) a common historical tradition, (b) racial or ethnic identity, (c) cultural homogeneity, (d) linguistic unity, (e) religious or ideological affinity, (f) territorial connection and (g) common economic life;

- (2) The group must be of a certain number who need not be large (e.g. the people of micro states) but must be more than a mere association of individuals within a state;
- (3) The group as a whole must have a will to be identified as a people or the consciousness of being a people.

If they do not have the will to be identified as a people for separate identity or separate nationhood then the question will not arise, even though they may appear to be a separate ethnic group. Or they don't even have the consciousness of it, so in that case there will be no dispensation for them in regard to self-determination as a people but if they have it then that is one of the factors that goes their in favour but not the only factor. And,

- (4) Possibly the group must have institutions or other means for expressing its common characteristics and will for identity.

Now after 1990 there have been several debates on this principle of self-determination and new principles have been added and the UNESCO experts suggested some additional criteria thereafter, after the Paris meeting and these were:

- (1) economic viability
- (2) a measure of international recognition.

Now I am not saying that we need to accept this as a principle, I am not rejecting it either, I am only saying that the UNESCO group of experts have put this as one of the additional factors that may be taken into account, this is not a definitive or final list, but just an indicator of principles that can be applied in trying to define a people and therefore number (2) here is a measure of international recognition. Now without that measure of international recognition it is extremely difficult for any state to put forward its case. Therefore some degree of international recognition at some point of time of that entity as an independent entity or as an entity worthy of the application of the principle of self-determination is necessary. That is why in regard to Tibet so many exercises have been carried out, and in this case there is not a small degree of recognition that it is entitled to this right but even the International Commission of Jurists have definitively stated that they are entitled to this. So we are not in trouble on this point. The other conclusions of the Unesco Experts include:

- (3) willingness to submit to a referendum and
- (4) willingness to respect fundamental human rights and peoples rights.

Now I am not coming straightaway to the point as to whether Tibet is entitled to all this, but I am saying these are the yardsticks that have been prescribed and in the

following paragraph I would see how much these criteria can be applied. So an attempt is made below to apply these criteria one by one in the case of Tibet. And I have to do it as scientifically and in as plain terms as possible, and as briefly as possible because Tibet is a land with a long history and tradition therefore it is very difficult to put all the historical evidence in a nutshell. The first criterion that I mentioned to you was a common historical tradition.

The historical analysis should leave no room for doubt that the people inhabiting Tibet on the roof of the world do constitute a 'people' entitled by international law to enjoy the people's right to self-determination. It was in recognition of this fact that the United Nations General Assembly adopted three resolutions, namely number 1353 (XIV) of 1960, number 1723 (XVI) of 1961, and number 2079 (XX) of 1965, which recognised the status of Tibetans as a people. The UNGA resolution number 1723 explicitly refers to "their right of self-determination." There can be no denying the fact that the Peoples Republic of China itself by its very Constitution and practice have treated the Tibetans as a separate and distinct entity though within the Chinese system. The Chinese constitution is the constitution of the "peoples of China". In the Indian constitution you may have seen, if you read the preamble, "We the people of India give unto ourselves this constitution." It does not talk of peoples, because of this common consciousness of the identity of an Indian from the north to the south and from the east to the west. The Chinese know of China as 'peoples'. The Chinese themselves regard Tibetans as a distinct "people", as a distinct group of people, people of an autonomous region. Important leaders like Mao Zedong, Zhou Enlai and Deng Xiaoping are on record for affirming the autonomy of the Tibet autonomous region. The very autonomy of the Tibet Autonomous Region springs from the recognition of a distinct character of the Tibetan nationality under the law of the PRC. Therefore, the fact of the Tibetans constituting a people endowed with the right of self-determination cannot be legitimately questioned.

R.P. DHOKALIA: We should not judge Tibet from the concept of sovereignty. Tibet should be treated analogous to Vatican — the Holy Sea. Dalai Lama is the spiritual and temporal head both. The two swords are one here. If you apply Western concept of sovereignty and other political concepts you'll find them conflicting.

S.D. MUNI: First, there is no doubt about the cultural identity of Tibet, not only in the Tibetan perception but also much duly recognised by all the countries who ought to have recognised it. The Chinese recognised it, and British India recognised it we haven't gone into the Russian sources which is very vital, but in our thinking about Tibet they also recognised it. There is no dispute about the cultural identity being recognised.

I don't accept the interpretation that since we have recognised the cultural identity we need not interpret Tibet from the perspective of modern international law. Let us

face the reality. We are seeking self-determination or independence in the modern international law. There is no escape, whatever has happened in fact happened several centuries ago. You can't build up a case of Tibet today by saying that it is a very exclusive category and therefore go to the comity of nations or anywhere and seek the kind of rights and advantages which may accrue to them within the parameters of modern international law by referring to an exclusive nature. That is more of a romanticism. We must therefore accept this that we have to seek a solution within the present context of international law and international politics.

Secondly, cultural identity has been recognised by everyone else there is no dispute.

Thirdly, the independence and sovereignty. No matter when they were invented, every other nation adopted it accordingly and became a sovereign independent entity in reference to the concept they adopted. The independence and sovereignty of Tibet is more a case of seeking decolonization but today in the political context I am not so convinced. Let me confess this very clearly. Today it is a case of Tibet having very viable authenticated records of its independent sovereignty which were not endorsed by any of the neighbours. Its very vital. The Chinese did not accept it. The British India did not accept it. The independent India did not accept it. I don't know if the Russians accepted it. I do not know. If it was not accepted, then the solution of the problem is not on the framework of decolonisation. Then the solution of the problem will have to be on the basis of self-determination. You know I am coming back to the last and real policy issues of that and we just cannot take excuse under the fact that Tibet is an exclusive category.

S. RINPOCHE: I only wanted to say this that it would be untrue to state that sovereign and independent Tibet was not recognised by anybody.

1. British India in 1904 Convention willingly or unwillingly gave legal recognition to Tibet. It should be considered as a recognition.
2. Letter sent in 1947 by independent India, quoted by Mr. Mehrotra, was sent to Tibet as a state. India recognised Tibet as an independent free state. The fact that the letter was withdrawn later is a different matter.
3. Friendship treaty between France and Mongolia in 1913 was based on equal status for Tibet. Tibet was also recognised by Mongolia.
4. In all treaties signed by Nepal it recognised Tibet as a state. When Nepal applied for membership of the United Nations, it had mentioned that it had foreign relations with Tibet and had ambassadorial exchange with Tibet. To prove their sovereign status, Nepal quoted their relationship with Tibet.
5. Bhutan who was not a member of United Nations then is a member now. Bhutan also had old relations with Tibet.
6. During the Second World War the decision of Tibet not to allow passage to its army for transportation of ammunition which was accepted by the British,

can also be considered as an indirect recognition by British of Tibet's sovereign status.

7. Tibetan passports being acceptable can also be considered as an indirect recognition.
8. In a similar manner Tibetan currency notes exchanged between Tibet and India, United States and other countries should also be considered as an indirect recognition.
9. If one were to see of 1960, 1961 and 1965 United Nations General Assembly debates many nations accepted Tibet as sovereign state. This should also be considered as an indirect recognition. This is my belief.

To say, therefore, that no one ever recognised Tibet's sovereignty is not based on facts.

VAN PRAAG: With respect to the status of Tibet at present, one needs to argue as many have examined in their papers, that Tibet is under illegal occupation. What does that mean? Tibet's annexation, if indeed can be said to have been an annexation, was illegal because it was done with the use of force or threat of force. The agreement signed in 1951 was under formal duress, which needs to be distinguished in the international law from the duress put on individual negotiators of a treaty. If the negotiators in a treaty are put under duress, that treaty can be invalidated as a result of that. In other words, the government in question can say 'my negotiators were not authorised or they were put under threat and therefore I do not accept that treaty'. Until and unless a Government says that, the treaty is valid. In other words it has validity, but it can be invalidated. The kind of duress that we are talking about where a Government, a power puts a country under a threat of the use of force, or in fact uses force, a treaty signed under those conditions is invalid *ab initio*. In other words the treaty has no validity, and can acquire validity only if the threat of force or the use of force is withdrawn, and the two countries agree freely to that particular treaty. That distinction is important because it does change the argument. Some lawyers are apprehensive that between 1951 and 1959 Dalai Lama worked together with the Chinese and was trying to find a settlement of some sort, therefore by that action Tibet did put a seal of approval on the treaty, and therefore the treaty was valid. The situation from 1951 to 1959 did not change the relationship because of the presence of armed force. The Chinese army was in Tibet and Dalai Lama was not terribly free or to do or say what he wished. In fact the first occasion Dalai Lama had of making the choice to freely speak out was soon after he fled and came to India in 1959, and on crossing the border he denied the validity of the 1951 treaty.

Even leaving aside all the arguments of duress that was put on the individual negotiators which also took place, the forgery of the seal which also took place,

there was an all important indication of closed atmosphere. Legally the issue is that Tibet was put under duress. Since then nothing has really changed the status of Tibet. The change of status takes place by acquiescence, by the fact that people at some point stop resistance. But the acquiescence of the Tibetans to the situation cannot be shown, and there has been an on-going resistance even if sporadic. To prove it does not necessarily require violent resistance, otherwise international law people would encourage the use of violence if they have to prove resistance in all situations. There can be other ways of showing resistance for international lawyers to agree. The recent Marble Court decision of Australian High Court restored lands belonging to aborigines which they claimed legally was theirs but had lost it 200 years' ago shows that not always do you fight for your rights and get them violently. That decision is relevant to the Tibetan situation in that respect. But besides that also there is no acquiescence. The challenge to China's claim to sovereignty over Tibet exists and continues to exist in the existence of the Tibetan government in exile. As long as there is a Tibetan Government in Exile, it continues to challenge it. Their acquiesce can be shown if Tibetans no longer recognise Tibetan Government in Exile, or the Dalai Lama to be their representative. Then it becomes of course some form of a fiction that there is an administration in exile which pretends to represent the people. As long as there is that show then the Government in Exile continues to be a challenge to China's claim.

The Tibetan Government in Exile should be seen as being the legitimate representative of the Tibetans and the legitimate government of Tibet. It is a government that was recognised, it is a continuum of the government that existed before 1951, with the Head of State as the Dalai Lama. From 1951 until 1959 that Government continued to be recognised as the sole Government of Tibet even by China. It may have been in their view a local government but it was the only Government of Tibet, with at its head, the Dalai Lama. When the Dalai Lama fled, he was still the Head of State of Tibet, whether it is part of China or not a part of China, that fled into India with his Government. He constituted his Government as soon as he came to exile. So that continuum continues. Dalai Lama is still the only recognised Head of State of Tibet, regardless of what the status of Tibet may be in relation with China. He is still the only accepted legitimate representative of Tibet. Until he gives up that role that continuum of the legitimacy of any Tibetan Government in exile is recognised or that is constituted by the Dalai Lama remains.

For the Tibetan community in exile it is important that this position is not changed. If the Tibetans were to decide that they are going to constitute a new government elected by the Tibetans in exile only, and not with any authority emanating from the Dalai Lama, then that continuity can be said to have ended. Then it represents the Tibetan community in exile but we will have to show, which may not be easy, that it also represents people inside Tibet. Whether or not there are elections to the Parliament and the Parliament elects the Cabinet, all this is possible as long as

ultimately the authority or the blessing officially or legally comes from the Dalai Lama that 'this is indeed the legitimate government of Tibet and I approve of it, I as Head of State of Tibet - not I as spiritual head, but as Head of State of Tibet.'

A.P. VENKATESHWARAN: Despite nearly 45 years of occupation, the Tibetan people have not given in. In a sense it is more impressive than what happens in Baltic States to which a parallel has been drawn and where a parallel does exist in many ways.

B.C. NIRMAL: Since I presented my papers on self-determination, I have been influenced and perhaps influenced other colleagues on basic issues relating to self-determination in general and Tibetan's right to self-determination in particular. But this kind of influence does not give any kind of copyright to any person. Similarly influence which other countries made on Tibet during its entire east or Tibetans made on others does not give any title either to China or to any State to claim sovereignty over Tibet.

My paper is divided into five parts. In first part I have discussed the legitimacy of Tibetan case for self-determination and its legal implication. In second part I have discussed Tibetan's right to self-determination from the perspective of decolonisation. Third part deals with the issue of human rights perspective and then in fourth part I had suggested that negotiations between HH the Dalai Lama and the Chinese Government is the best solution to the problem. The next part deals with modes of implementation of the right of self-determination and there I have referred to various autonomy models which have been evolved by many states in response to the demands of self-determination. I have also referred to the suggestion made by Dr. Dhokalia that we can consider the possibility of creation of a Tibetan State on the line of Vatican State of Holy Sea. Then last part concludes with my observations on the future of Tibet.

In first part I have examined the status of the right of self-determination under international law. I have concluded that this right has its juridical status under modern international law. It has been recognised in various resolutions, UN Charter, Friendly Relations Declaration. It is confirmed by the State practice in the era of decolonisation when one billion people were liberated under the banner of self-determination. This right has also been recognised by the international code in a number of case right from Namibia, South West Africa and Western Sahara.

So far as the status of the right of self-determination is concerned, there is no doubt about it, but so far as its legitimate claim is concerned there is a lot of controversy. I have just pointed out one point. Self-determination to the Biafrans while recognising it for the Palestinians reveals the ambivalence of international community on the question of legitimate claim to the right of self-determination. The most recent exercise of self-determination in the former Soviet Union, Yugoslavia and Eritrea have made the issue more complicated.

Here again I have distinguished the case of Tibet from other self-determination movements, and I have pointed out that Tibetans are fortunate that the legitimacy of their claim to self-determination is already recognised by the General Assembly and this puts the Tibet's case in the category of Eritrea and distinguishes their self-determination movement from those of Chechenya, Quebec, Kurds, Northern Somalia and countless other secessionist self-determination movements. The close similarity between the situation of Tibet and those of Baltic States and Kuwait also placed Tibet's case for self-determination in comparatively better legal position than most self-determination movements. Not surprisingly many studies confirm that the Tibetan people possess the right to self-determination. They possess this right because they satisfy the requirement of peoplehood laid down by international law. They are a separate and distinct people and have been treated so by the constitution, legislation and practice of the People's Republic of China. Right to self-determination is a people's right. And once it is admitted that Tibetans are a people for international purposes, there is no basis for any State to deny the entitlement of Tibetan people to self-determination.

Tibet was an independent State both in fact and in law prior to the intervention by the People's Republic of China. Further it strengthens the legitimacy of the Tibetan claim to self-determination. There are many claims to self-determination by different people, but Tibet is separate existence as an independent State for so many years is an additional factor which goes to strengthen their entitlement to self-determination. The repeated assertions of China that Tibet is an integral part of China cannot serve as a basis for denying the people of Tibet the exercise of their right to self-determination because its claims to be the territory are without any justification. Neither the Seventeen-point Agreement, nor the Chinese invasion and subsequent conquest of the territory can grant it legal title of Tibet. China knows this fact and that is why it has never claimed title to Tibet on the ground of conquest of the territory. Rather it has based its claim on subjection of Tibetan people by the Mongol and Manchu imperialism. It is very sad that China which claims to be a proponent of self-determination and opponent of imperialism has taken the plea of Manchu and Mongol imperialism in order to justify its existence in Tibet.

I have quoted Wilmer, Cutler and Pickering to show that even historical argument are flawed and baseless under international law. And this follows that the principle of territorial integrity does not come into operation in the case of Tibet.

Now the question that needs to be considered is whether special circumstances of the case such as the passage of time can operate as limitation on the exercise of Tibet's right to self-determination and what is the nature of the duty correlative to this right of self-determination. These problems in turn raise a number of complex questions. If 50 years of China's military rule in Tibet is sufficient in itself to create any title to invade a territory by prescription? Does a right of self-determination once declared by the United Nations continue indefinitely?

I have examined both the issues and have come to the conclusion that since China's invasion of Tibet nothing has happened which can turn an illegal title into legal title.

I have also suggested that right to self-determination continues despite the passage of time. In this context it is very interesting to note that the General Assembly has not withdrawn its Resolutions on Tibet. The Organisation knows how to repeal decisions when it wants to. In 1991 the General Assembly revoked its notorious Racism is Zionism Resolution. But the General Assembly has not done so in the Tibet case. Moreover there is sufficient evidence to indicate the inability of the Chinese authority to subjugate Tibet. Modern international law forbids the recognition whether initially or by consolidation of title, obtained by illegal force. The relevant provisions of the General Assembly Resolution, definition of aggression provides "no territorial acquisition or special advantage resulting from aggression is or shall be recognised as lawful". It is crystallised in practice involving the Baltic States where Israel annexation of Jerusalem in 1967 and in the General Assembly Resolution cited above. The world did not recognise the Soviet Union's annexation of the Baltic for 50 years and waited for the exercise of the right of self-determination by the Baltic States, why not in the case of Tibet?

The question arises what are the correlative duties of the third states. I have pointed out that if any third state grants *de facto* or *de jure* recognition to China's presence in Tibet it amounts to a breach of international law. This suggestion has been made in the context of East Timor and I feel perhaps Prof. Praag will agree with me that the same argument can also be advanced in the case of Tibet.

What is the nature of the duty of non-recognition? Is it possible for the third states not to have any dealing with the aggressor state? That is not possible. But even minimalist interpretation of the principle requires that a third state should not do anything which in any way impinges or hinders the exercise of the right of self-determination by the concerned state. Now so far as the party to this is concerned, it is the duty of all member-states of United Nations to provide moral and material assistance for the realisation of the right of self-determination. It is also their duty to provide help to the United Nations to carry out its responsibility under the UN Charter.

The UN Charter on self-determination has not lapsed, nor the General Assembly Resolutions on the right to self-determination of Tibet. For this reason, neither world politics nor the fact that China is a great Asian power and a permanent member of the Security Council should be allowed to thwart the Resolution of the Tibetans. The issue should not be seen as a conflict between Chinese people and the people of Tibet or between China and Tibetan Governments in exile. It is a conflict between China and the international community. China, a permanent member of the Security Council has violated its Charter obligations making it state responsible under international law. Needless to say, such violations entail special responsibility for the international community to deal with such violations in accordance with the rules of international law.

In the past the United Nations has not been supportive to the Tibetans and given the present international scenario they may not get much support from the United Nations in near future too, although they need it very much for the furtherance of their cause. But this should not cause desperation and frustration among the Tibetans because the most recent exercises of self-determination has been accomplished outside the United Nations framework. The recent events, the former Soviet Union and former Yugoslavia have made clear that when the forces of freedom and democracy become powerful, they can not be crushed by regime howsoever powerful it may be. Neither super power status, nor permanent membership of the Security Council could prevent the disintegration of the Soviet Union empire and the extinction of the institutionalised Marxism, Leninism in Soviet Union and eastern Europe. Similarly the Chinese people's yearning for democracy and the Tibetan's people struggle for freedom will also cause change in Beijing's position. However, imperatives of world peace and stability demand that international community actively encourage China to reconsider its position and work for the peaceful and smooth political change in Tibet. The recent events in former Yugoslavia make clear that if timely action is not taken by the United Nations, when crisis starts it will sweep the region and cause vast suffering to its people. Will the international community learn lesson from these and other tragic episodes involving the issue of self-determination and not allow the repeat of the same in future?

CYRIAC MAPRAYIL: If an agreement between the Tibetan Government and the Chinese was signed under duress it goes without saying that it has no validity. If the Chinese Government has occupied Tibet the actual possession of it does not necessarily grant legitimacy. We are all unanimous that human rights argument is the main argument. We have to develop this and move forward regardless whether legally speaking Tibet is part of China or not. If state orchestrated state terrorism is being practised against a section of the community, if that community has unique identity, culture, racial background and linguistic distinctness then something has to be done. In fact China does not treat Tibetans as part of its population. If a child is ill-treated so badly by parents, all the rights of the parents are lost. The child is taken away from their parents. And there is no argument against it because the child is not being treated as a child. In the same way Chinese Government has not treated Tibetans as part of its community. They are racially discriminated — educationally, in the area of housing, in the area of employment, in relation to practice of religion, and freedom of conscience. The Tibetans are not treated equally with others. The Chinese Government has lost all claims regardless of what it had and have anything to do with the Tibetans. As Ms. Johnston has said, it is for the international community to decide what to do with Tibet and Tibetans in most civilised appropriate way. When the dragon picked up the baby there were governments and people who said "oh, it is only being picked up, so that the nappy is changed and the baby is fed." Now we know what

has been done with the baby, which was Tibet, and it is wicked and cruel not to say it. Michael has correctly said that it is for the neighbours of China to come out and say it. We should not leave it to western countries to bring justice into our midst. Let us argue for Tibet. What are we afraid of? We should set up Tibetan support groups in every country and we should set up ways and means of training those support groups, so that they can educate the communities in those respective countries and the momentum will build up.

R.P. DHOKALIA: I heard some comments that this whole exercise is fruitless because there is nobody to listen or care. Actors involved would disregard what is being suggested. We are not diplomats to negotiate a settlement, nor is the Centre a political body, it is a research centre. It gives opportunities to specialists from different disciplines to enable people to comprehend the nature of disputes arising out of different problems. These problems need to be understood in proper context to add strength to the parties involved in the Tibetan issue.

Law is not mathematics. Interpretations are made. Lower court gives verdict, higher court may overrule and the two judges may differ. Rule of law, however, is the only hope as long as good men are not available. Plato tried to devise a system of rule by goodmen and having found it impossible to ensure availability of good men he opted for rule of law. Even rule of law cannot function if good men are not there — good judges, good lawyers, good citizens, otherwise the whole system will get distorted.

Legitimacy can be approached from different points of view — historical, political, legal and moral. Legitimacy means the capacity of a system to engender belief or faith in existing institutions which is acceptable to the society as most appropriate. Legitimacy can have support at national or international level. We are here discussing the question of legitimacy of authority with reference to Tibet and China. There are two parties involved. Legitimacy is provided by the actors like international community including neighbouring States.

As far as Tibet is concerned, it is a unique State with historical roots. Ancient States provided legitimacy on the basis of divine theory. They were not necessarily theocratic States in the modern sense of the term but they functioned as State.

There are three functions of a State, protection of people, welfare of people and representation of people at international level. Ancient States subordinated all these functions to spiritual elevation — good and virtuous life *dharma*, *artha*, *kama*, *moksha*. *Moksha* or liberation can be attained provided *artha* and *kama* are subordinated to *dharma*, and *dharma* is not religion but righteousness. I am making this comment with reference to Prof. Rinpoche's observation. He said that Tibetans are not concerned with the objective of attaining political freedom, but are involved in a *satyagraha*, seeking truth and nonviolence. This is very relevant. In Tibet, politics, economics and all other activities had been subordinated to the cause of spiritual

enlightenment. Dalai Lama is not only a political leader, but a spiritual leader. He is considered as incarnation of Buddha. This is very important factor.

When we talk of legitimacy of Tibet, the central point is Dalai Lama. He is not elected nor does he inherit the title by birth. He is chosen by a very complicated procedure which may not be modern but it has great importance. Dalai Lama's legitimacy as spiritual leader is unassailable and unquestionable, the point recognised by the resolutions passed in various Parliaments and international bodies.

Historically, legitimacy of Dalai Lama's rule in Tibet has very great importance. If you examine the legitimacy of the Dalai Lama's Government in Exile from the point of view of Dalai Lama's spiritual leadership or from modern concept of international law the identity and continuity of the government is not disturbed. China has not yet found another Dalai Lama. They have found a Panchan Lama by manipulation, but there is one Dalai Lama and there is no Tibet without Dalai Lama. Legitimacy of the Government in Exile continues both from historical as well as modern international law point of view.

As far as China's authority is concerned, Peoples' Republic of China is a people's democracy. According to Marxism, State is an instrument of oppression and exploitation, and when communism is established the State would wither away. In no part of the world communism and dictatorship of proletariat could be successfully established with objective of withering away of State. It is argued that, only that State authority has justification which has dictatorship of proletariat, other States have no legitimacy because proletariat is exploited and oppressed by the capitalist class. The institution of Marxism has collapsed, experiment failed in Russia. Ideologically, however, as far as the legitimacy of state authority is concerned from point of view the Peoples' Republic of China all States which exist are exploitative, only the authority in China of Peoples' Republic is legitimate and can be justified.

From the viewpoint of international recognition, all resolutions recognise Dalai Lama as the only true leader of the Tibetan people inside or outside Tibet representing an ancient religion-political order. Whether Tibetans are inside or outside Tibet Dalai Lama is their leader. The question of legitimacy of Dalai Lama's leadership does not arise.

Modern theory of state gives primacy to the concept of consent. Earlier the State derived its legitimacy from divine theory and force theory. Divine and force theories have been rejected today. Modern political authority derives its legitimacy from democracy and the consent of the people. From that point of view, it is imperative for an authority to have political support.

Dalai Lama's Government in Exile has political support. In various resolutions it has been reiterated again and again that — Dalai Lama and his Government in exile are the only true representatives of Tibetan people. China propagates that Dalai Lama represents only a few Tibetans in exile, and people in Tibet have welcomed the liberation of Tibet from the feudalistic control of Dalai Lama.

Let us formulate our recommendations in the light of papers submitted and discussions dealing with the status. The position today is that the Tibetan territory is under the illegal occupation of China. This occupation violates the Charter of United Nations. Aggression has been committed. Various resolutions from different organisations have already repeated this again and again and there should be no difficulty in reiterating that Chinese authority in Tibet is illegitimate, its continuation is illegitimate and the only remedy is its vacation.

When you say it is illegitimate then what is the remedy? Remedy can be provided by the people themselves, by legal and political institutions, and through international and governmental support. If people are pushed to the wall political process becomes stagnant and if all doors are closed what is the alternative for the people to question the Government's illegitimate continuance? Most self-determination movements have resorted to terrorism and violence. In case of the Tibetan people, this is the only self-determination movement which has consistently, persistently, with conviction and faith remained nonviolent. Prof. Rinpoche even said that the Tibetan people are reconciled to their destiny and attainment of independence is not necessarily their ultimate goal. Even if Tibet is wiped out of the map, it would not matter and they assert that they shall continue to have faith in Dalai Lama.

This is a position of enlightened souls because political process is manipulative process. The questions which we are discussing are the questions of political management. Legal arguments have meaning only when they are presented before the court by the parties and there is a third-party judgement that decides the case. The world court may come to a conclusion that authority of Peoples Republic China in Tibet is illegitimate and its occupation should be vacated, but it may not be possible to give effect to this judgement. United Nations resolution cannot be effective unless backed by Security Council. The exercises which we are making for action plan are exercises from the point of view of the creation of world public opinion.

ASGHAR ALI ENGINEER: Legitimacy is ultimately derived from people who have their own traditions, laws and religious beliefs which also become sources of legitimacy.

Even if some people doubt Tibet's separate entity, as long as people of Tibet have faith in Dalai Lama and assert their right to sovereignty, since people are the ultimate source, Tibetan struggle for nationhood will be legitimate.

I would like to give few examples of situations where separate sovereignty never existed and yet they became sovereign nations. Take example of Pakistan. Did it ever exist in history as a sovereign nation until 1947? It came into existence in 1947 and all of us, including India, accept it as a sovereign nation. What is its legitimacy? The only question is whether it was ever an integral part of any country. Yes, Pakistan was such an integral part that no one could ever think before 1945 that it could become a sovereign nation, yet, it has its own legitimacy because

people of Pakistan accepted it through their religion, through their laws and through their traditions. Who thought that Pakistan will break into two? Bangladesh was East Pakistan and an integral part of Pakistan and yet it became an independent sovereign nation in 1971, because people ceased to have faith in Pakistan. They came to a conclusion that they have their own language, their own culture, their own traditions and they cannot exist within Pakistan and they must become a sovereign nation.

If we accepted Pakistan in 1947 and Bangladesh in 1971, why Tibet, which is historically a sovereign nation by itself, should not be accepted as a legitimate sovereign nation? Just because China claims Tibet as integral part of China should we doubt the legitimacy of the struggle of the people of Tibet?

Take the example of Kuwait. Iraq argued that Kuwait was integral part of Iraq and it was the British who created an independent Kuwait. They decided to send their troops and the whole world opposed it. Maybe in history Kuwait was part of Iraq at one time but Kuwait as a sovereign nation has been accepted by the United Nations. It separated for whatever historical reasons from Iraq and since then has been existing as a sovereign nation. World accepted the legitimacy of Kuwait. America got support for international community and Iraq was thrown out from Kuwait. Even if China claims that Tibet is not a legitimate sovereign nation, let them say so because they have vested interests. China has no moral or legal force behind their arguments. They have taken over Tibet by military force and to legitimise their action they claim that Tibet is historically an integral part of China. Even if Tibet was an integral part of China historically the people of Tibet today have demonstrated that they are with Dalai Lama and not with People's Republic. This itself legitimises the struggle of people of Tibet. The ultimate source of legitimacy is people and people prove legitimacy through their culture, language, religion and through their contemporary actions.

LEGITIMACY OF THE RIGHT TO SELF-DETERMINATION

3. POLITICAL, SOCIO-ECONOMIC PERSPECTIVE

KARMA CHOEPHEL: We are talking about the self-determination and human rights at the general level but basically what does it mean for Tibet? When we came to India as refugees, and to other countries, we came with the ground that we have lost our independence. We did not raise the question of human rights, self-determination or genocide. We had lost our independence and we came as refugees. Today also if you take a referendum of the Tibetan people both inside and outside Tibet, it is my conviction that the majority of the Tibetans still are for complete independence of Tibet from China and are not for any compromise solution. You should not have any doubt that the real demand of Tibetans is for complete independence.

However, with the political situation, changing, we have also to adapt accordingly.

In the beginning when we tried to internationalise our struggle the word used was 'plebiscite'. We wanted to have an internationally supervised plebiscite of the Tibetan people both inside and outside Tibet to determine whether the Tibetan people are happy to live under the Chinese or under their domination or they wanted to be independent. This was a challenge that the Chinese could not take at all. In many of the international fora we raised this question but they could not speak anything about it. After some years we had to stop using the word plebiscite because the Kashmiri people started talking about it. There was a nexus between them and Pakistan. As refugees in India we have a number of bindings as honoured guests in India in carrying out political activities. We have always to be very careful and therefore we stopped using this word.

After this we started using the word 'referendum'. That also we had to stop. We have started using the word Self-determination which we have taken from the UN resolution on Tibet, and is also part of the Universal Declaration on Human Rights. As Prof. Rinpoche said we have been cautioned, stopped and warned against using this word also.

We would like to term our movement as 'people's struggle or national struggle', and we want complete independence. This is what is 'ought', what is 'is' is something very different. That is what politics is and it has its own time and it goes on changing with times.

Some of the foreign friends have a misunderstanding about the real demand and aspiration of the common Tibetan people. It is not that only politicians whose voice is only to be heard. The common Tibetan peoples' demand is still for independence. If you have respect for the common Tibetan people and the majority of the oppressed people then we should not think what some Tibetans may think of asking for some compromise asking for some autonomy.

R.P. DHOKALIA: Tibet had its geographical identity and its historical tradition of cloistered isolation — cutting it off from the world and isolating it with its unique age old institutions. In geographical situation it had compulsions of its own, and its philosophy spiritual and religious attitude compelled them to remain isolated from the rest of the world in order to preserve that exclusive identity and cultural heritage. They did not want to participate, or assume any kind of responsibilities in international life nor could they develop a structure, which in modern sense of the term could be called a political setup. In spite of that, basically they were conscious of their separate, distinct identity, separate from China. Spiritually Tibet has been part and parcel of Indian culture. Their religion Buddhism has been their own now and they believe in Buddhist philosophy and traditions, and have evolved Tibetan Buddhism which has a distinct identity of its own. Religion and politics conflict in Tibet and different claims are advanced by China and Tibet. In Europe also during a long period of time all over there was conflict between Emperor and the Pope. It was confusing and intermingled and gradually nation-states came out of it. In our region religion and politics were intermingled. This also happened in India. Ashoka became the Emperor of India and torchbearer of Buddhism. Tibet had a distinct geographical intermittent intrusions. In fact we are trying to judge these traditional societies from modern perspective of sovereignty. Sovereignty as such didn't exist. Sovereignty is a modern concept developed since sixteenth century only in Europe and has covered now the entire globe.

NARESH MATHUR: When would you date it?

R.P. DHOKALIA: Sovereignty? Emergence of nation state in the 16th century. Because of economic forces a nation-state emerged for a commercial class which was coming up by setting up of industries. The commercial class had a vested interest in the nation-state and strengthening of the national-king. Today the forces are such that national entity is becoming eroded and nation has become too small for multinational commercial ventures and economic interests.

NARESH MATHUR: When did this idea of sovereignty and nation-state come into Asia? When would you date it?

R.P. DHOKALIA: You see no distinct date can be given but British scholars always maintained that India was historically not a nation. It is a subcontinent, like Europe. Entire Europe is Christian and there exist small States. Britain happened to rule whole Indian subcontinent. Because of the resistance against a foreign ruler a kind of nationhood concept was developed by the Western educated political leaders of India and renaissance which was started by Raja Ram Mohan Roy. From that period Indian consciousness as a nation or a national entity emerged. It has still not culminated fully. We are still not a nation in the sense that different regions think of caste, religion and language. The national bond is not strong enough to submerge our religious differences, linguistic differences or provincial differences. It is something artificial which has not grown from below. It is a negative development. Negative in the sense — against the alien ruler. British were aliens. Muslims came but made this country as their own and settled down. They never thought of going back. British came but their home was Britain, they exploited us fully but they never accepted India as their home. This is the complaint again about non-resident Indians who are abroad in Africa, South Asia and America. They go there do business, exploit the resources and then go back home and are therefore not accepted by natives.

J.M. MUKHI: Are you therefore saying that when we look at the situation in Tibet, with the historical background and recent past, and the particular situation of Tibet with emphasis on religion and isolation and its goal of wanting to be remain with in those traditions, then modern international law which started in Europe with the emergence of nation-states with these concepts of sovereignty, etc., may not be strictly applicable to Tibet in judging or interpreting what has happened there and what should happen there because we are still in an earlier century. We haven't caught up with what has happened in the West and therefore these Western concepts of international law are not really applicable to the situation.

NARESH MATHUR: The treaty of Westphalia basically to distinguish separation of political and religious power from the Church and state, and if there is a person like the Dalai Lama that means this separation has not happened because both sources of power rest in him.

B.C. NIRMAL: Assuming for the moment that Tibet was not an independent state on the critical date 1950, even then it is entitled to self-determination under present circumstances. In this regard much discussion has been done. The criteria is whether Tibetans are satisfied by the Chinese rule. Even the law, constitution and practices of the Peoples Republic of China recognise the distinct nationality of Tibet. The grant

of autonomy in the autonomous regions is also based on the recognition that Tibetans are a distinct people. Lastly the General Assembly of the United Nations had also recognised the Tibetan people as a people who are entitled to self-determination. According to many authors democratic legitimacy can provide a harmonious balance between the two conflicting movements — self-determination and territorial integrity. Since China's authority is illegitimate because of its very poor performance on human rights, because of this policy of genocide or illegal detention, etc., it also provides an important justification for the exercise of right to self-determination.

The least which the international community can do and should do is to persuade China to ensure the respect for human rights. China is responsible for that under international law. Violation of human rights are contrary to international law. The large scale violation of human rights which are going should cease forthwith and all the governments should persuade China to see into this matter.

Assuming that they are not entitled for external self-determination but they have very strong case to claim internal self-determination. In Seventeen-point Agreement of 1951 China itself made certain provisions. By which a certain degree of autonomy was promised to Tibet but it did not honour this provision. It must be noted that under that Agreement China gave a number of promises to maintain the distinct status and functions of the Dalai Lama and the Panchen Lama, protect freedom of religion and the monasteries, and to refrain from compulsion in certain other matters. Instead of fulfilling these obligations China unleashed the policy of genocide, oppression, terror and demographic aggression against Tibetans resulting in the exodus of a large number of Tibetans as refugees. The international community should persuade China to grant autonomy which ought to belong to Tibetans.

What weight does UN practices give to historical considerations? The UN practice suggest that historical considerations should not be given too much importance. Once this element is inducted it will be difficult to trace how long, how back we should go. According to the logic we can say that since Chola's established an empire in South-East Asia and therefore India has right to it.

In this regard a very leading case is that of Western Sahara decided by International Court of Justice in 1975. In that case Mauritania and Morocco claimed sovereignty over Western Sahara on the basis of historical claims. The International Court of Justice opined that self-determination means regard for the free expressed will of the people. It also held that where legal ties were established consultation with the people is necessary. This kind of consultation never took place in the case of Tibet. This fact should also be taken into consideration when we examine the judicial status of it.

S.D. MUNI: I had conceded the point during discussions that self-determination was a question of decolonisation, but I accept the perception of independence and the documents of independence about Tibet. When I said international recognition from

other countries had not come what I meant was what Prof. Dhokalia had said, and I have no confusion on that. The problem arises from these countries wavering positions on independent status. I am not looking at it from my perception but I am looking at in the context of international politics. When these countries keep on changing their stances for political reasons, which I have been questioning repeatedly, let us look at it, but it has not been done. Today if we make a case for independence then in terms of international politics the case runs into difficulties. That is precisely the point I have been making. I thought it was important.

For instance, you gave an example of Indian position, in 1947, but then somebody put stress on the 1954 Agreement between China and India which talked about Tibet Autonomous Region. The whole thing collapsed there.

Similarly, about the British we mentioned the evidence of 1904 treaty, and somebody would mention the suzerainty problem and the whole argument collapses.

It is in this context I am mentioning that international status of Tibet is a matter of debate and ambiguity from the point of view of the vested interests. I am not saying from the point of view of Tibet, I am not saying from the point of view of legal position. I accept the case which you had built up for Tibet's independence, and I have no dispute about it.

What I am saying is that this legal case is being put into difficulties because of political perspective. And if that is the situation today let us accept that.

J.M. MUKHI: Prof. Muni we understood you perfectly when you raised the point earlier that whatever we may be talking about the legal status, as professors of international law or International Court of Justice, etc., ultimately it is international politics which will bring about a solution. There was an indirect reference to that by Prof. Nirmal, when he cited the analogy of Kuwait and said there was a power which saw to its conclusion. Ultimately, we all know, whenever this matter gets settled it will be by international politics. In the meanwhile the demand for independence based on morality and law must go on. We are therefore examining the pure legal status of Tibet from the point of view of academic lawyers as to what international court, if it is unbiased, might decide.

NARESH MATHUR: The sale of Timber from Tibet has fetched China 60 billion dollars.

L.L. MEHROTRA: At one point of time, China was ready to sell Uranium to Russia from Tibet. I am saying we need not go into all this. In an imperial situation all these apply. If we take that view it is an outrage against China and the Chinese claim over Tibet, but the fact of the matter is that the Chinese have tried to assert their claim. It is because of that claim that Tibet is not able to assert its authority as an independent power. It need not, however, make us conclude that the status of

Tibet in 1949 was not that of an independent nation or that there is no hope for Tibet in the future as an independent nation.

I would conclude this with one instance from a very important leaf of my memoirs, which I have still not recorded. In October 1980, Mr. Narasimha Rao visited Moscow as the Foreign Minister of India and Chairman of the Joint Indo-Soviet Commission. The meetings are over. Ten months earlier they had entered Afghanistan. We were very agitated over their presence in Afghanistan and we made it very clear to the Soviets that we cannot endorse this. I was sitting by the side of Narasimha Rao at 4 O' clock at tea at the residence of Ambassador Gujaral. I was the deputy chief of Mission. I was sitting next to the foreign minister. I asked, "Sir what is the future of Afghanistan? How do you reflect on it". He said: "When Mahatma Gandhi made his call in 1942 to the British to 'Quit India', neither the British nor I knew that in 1947 they will quit. Afghanistan will get out of the clutches of Soviet Union." I saw the conviction with which Mr. Rao said. This is India, the deep and dear friend of the Soviet Union reflecting in the future of Afghanistan. Years later, circumstances forced the Soviet Union to get out Afghanistan.

Apart from being a very humble student of history and with some experience of diplomacy I might say that it is not India's ordinary interests that are involved in Tibet. The Americans are very fond of talking of their vital interests. My understanding is that in Tibet India has a very vital interest. Unless we make India conscious of this, our positions will not change and we will not bring Tibet nearer to its heavenly days. I think it is our responsibility, not so much the responsibility of Tibetans in India on this issue to inform our people of the facts of the Tibetan case.

I would not fight a battle with the government on this issue. A government functions within a totally different parameters, and you must understand those constraints. Government of India did for His Holiness the Dalai Lama what it could in 1946 during the interim government. Sarojini Naidu was right when she said we have done what we could have done. We were not yet plenipotentiary, a successor to the British. India had not been partitioned. It was an interim status and it could be terminated any day. Even the independence of India could be in jeopardy. We did however invite them.

When His Holiness the Dalai Lama wanted to come to India, we were the only ones to know he was crossing. I was in Sikkim. That night we did not sleep when they were to cross. I was posted in Sikkim and the late Apa B. Pant admired the Dalai Lama, from his visit to Tibet, as one of his dearest, his spiritual friends. He was the Political Officer. The Dalai Lama was crossing. The Chinese were naturally looking for the Dalai Lama he was not there and he was not anywhere around. They were looking for him everywhere — one valley, the second valley, the third valley the chase was total and complete. His Holiness in *My Land and My People* has given some account of how he came. They were travelling by the night and during the day they were in homes. The Chinese gave a chase but could not find

him. He crossed into Misamari safely and was given, sanctuary in India. But then the Chinese came to India's frontier itself with all their military might. What followed is well known. We knew that the Chinese would come, we knew that the Chinese were moving from Lhasa in 1950 to the Indian frontier. Nehru's attempt was to contain the Chinese advance by posting small pickets there, which is called by Maxwell as India's forward policy. Our little attempt to defend our territory on defined points, as called by Maxwell as India's forward policy, the provocation was all from the Chinese.

In that situation of a developing conflict with China, we received the Dalai Lama and we kept him in our country. There were not many takers, I will tell you. This must be stated because our Tibetan friends tomorrow will forget what India has done for them. They will only remember that India had treated Tibet as an autonomous region and distorted this picture. We did for the Dalai Lama what we could under those circumstances. If India wanted to avoid a war with China you cannot blame India. The Dalai Lama became a critical issue, India's support to the Dalai Lama, in Chinese eyes.

R.P. DHOKALIA: A Chinese diplomat claimed that they knew of every move of the Dalai Lama and they knew that he was going to India and they facilitated the exit. They could not dispose him off. They wanted him to be India's liability, and to exploit that situation.

L.L. MEHROTRA: That argument is an afterthought.

AJIT BHATACHARJEA: After the excellent presentations we have had, the doubts anyone of us may have had concerning demand for self-determination and independence have been removed. We also had some glimpses of reactions to the Tibet situation. At the beginning UN made endorsement to self determination, but no further action. Each Government concerned had its own motivation. India after the initial sympathy for Tibet expressed in 1947, the document that was cited, later altered its policy, for reasons which had nothing to do with Tibet but for its own security considerations, the role of Pakistan, the western alliance and the pressure of Soviet Union. We have, to keep these considerations in mind trying to work out how best Tibet's case can be advanced. We cannot ignore them, they are very important.

What is the present situation in the world, and do governments view the prospects of Tibet gaining independence or autonomy? Overall, the atmosphere and the world sentiment is more favourably disposed towards self-determination as an extension of human rights. We have seen in the last few years, the actual expression of self-determination. The dissolution of the Soviet Union, into different ethnic units is the biggest example. Whatever other relevant factors may have been but this was a

major factor. The separation of Czechoslovakia is another case where the same process has been done peacefully. In Canada the separatists in Quebec lost the referendum on this issue but avoided a violent clash. In Northern Ireland, the Prime Minister of Northern Ireland is meeting the leaders of I.R.A to evolve some way whereby Northern Ireland peacefully decides its future.

Very old problems are now showing signs of thaw. There is, an element of fluidity in the world. Apart from the legal and, the conceptual approach, the way the governments are behaving has altered the situation. Overall, the situation is somewhat more favourable than it was in the fifties or sixties.

Of the main Governments concerned, three are relevant to us.

First is China, which a very strong military power and also becoming a very strong economic power. Though economic advance brings about social strains which may bring problems in its wake, that stage has not yet come. It has very little concern for human rights, which it demonstrated by their resistance to the American threat to use trade sanctions. They didn't succumb. It shows that they are really a tough government not easy to be pressurised. On the other hand the leadership of that government is now old, aged, withering and there is a certain question mark as to what its successors will do. The new generation is more open to global information, media pressures and are likely to be more receptive to what the world thinks. The future even in respect of China is not as dark as it looks at the moment.

The USA, which is biggest global power of the world at the moment, is committed to human rights. They are supportive to the Tibetan cause. Their motives may be mixed, they may have their own reasons to press China to leave Tibet, nevertheless at this moment of time they are supportive of the Tibetan cause. That also is favourable in terms of Tibet.

The Indian government, is no longer the same as it was in the fifties. Mr. Mehrotra has described the considerations influencing our government. Now the tie-up between Pakistan and the West is no longer there. On the other hand we do not have the Soviet shoulder to lean on any longer. That has brought about the second advantage, we are no longer regarded as an adversary by the United States, so we can work with some degree of a co-operation. The situation is quite different to what it was in fifties. Today, it is a fluid situation.

The other consideration which greatly influenced Indian policy is Kashmir. While there are obviously dissimilarities, between Tibet and Kashmir, what has prevailed upon the Government of India to some extent is this feeling that if they are supportive of Tibetan's self-determination they would be asked about its stand on Kashmir as well. It is important for us to be able to distinguish between the two situations and see the similarities as well. Culturally, historically, and for various reasons Kashmir has a strong case for self determination. However there are vital differences.

Indian troops entered Kashmir by invitation, not only its ruler Maharaja Hari Singh, but endorsed by Sheikh Abdullah who was the popular leader of the people. In the

case of Tibet there was occupation which was resisted by the Tibetan people. That is a major distinction between the two. India is a democracy. We allow freedom of opinion, people can say what they like. We have had elections in Kashmir. Kashmir enjoys special status and autonomy under the Indian Constitution. But we cannot close our eyes to the insurgency that has been going in Kashmir for the five years. It has had external support but also considerable local involvement. The Kashmir issue has again attracted global attention while Tibet has not attracted any global attraction.

Various exercises seem to be going on in Kashmir. Prisoners who are anti-Indian or pro-*azaadi*, who stand for independence, or are in favour of Pakistan have been freed and there is hope that there will be some kind of compromise. The process is just beginning and we don't know the outcome. On the other hand secession can be ruled out because no government in New Delhi can agree to outright secession.

We have all accepted the legitimacy of Tibet's case. We have now to discuss the strategies that will have Tibetans secure their claim. The Dalai Lama is committed to non violence, by tradition and by religion. Also if you look at the existing realities of the geographic situation, the strength of the Chinese forces at various points, the possibility of guerrilla action being fought is very small, even if they had to go in for it. Armed revolt is not sensible.

Then another course is *satyagraha*, our own Indian contribution. Again in a very thinly populated place, with small centres of population widely spread, bad communication, the possibility of that being effective is minimal. The difference between the Indian situation and Tibetan situation is striking in that, the British had some civic concept of behaviour. They stuck to the law. The Chinese are not known to have such inhibitions. Then, Britain was 5000 miles away, a small country with a small population; ours was a large population in a big country. The situation is totally reversed for Tibet — it has a small population, with a big country breathing down its neck. The prospects of a peaceful *satyagraha* being successful are remote.

Tibet has to depend almost entirely on the susceptibility of China to world opinion. How does one go about this? Support from the world community will be limited if emphasis is laid on independence, on which we all agree that Tibet has a very strong case historically. We will not get support from India for reasons mentioned. Other countries may also have similar considerations. Also the strength of China is such that nobody wants to antagonise it by demanding independence for Tibet.

Self-determination, however, is a concept that has been acceptable throughout the world. If the push, is on self-determination, Tibet can get a fair measure of support from the world, and in view of changes in India's own domestic policies on Kashmir, it may also be more accommodative than in the past.

For, purely strategic and tactical reasons, self-determination seems a better stated objective than independence. The question is how to go about it.

One objective can be to make the best case possible in every possible way from the material we have and we can get for Tibet's independence and take the case to the International Court of Justice. We can make the maximum case for independence and directly or inferentially accuse China of every sin under the sun and make a condemnatory approach to China. We have to decide how much success such an approach can have.

The other approach is to leave the window open for possible discussions with China while asserting Tibet's right to self-determination.

To sum up:

1. We should reassert, Tibet's right to self-determination and insist, that it has been denied and needs to be restored. We need not specify the content of self-determination. It could be independence or it could be short of it. I do not think that we need to get into that particular argument.
2. We could appeal to the exile Dalai Lama's Government to formulate its views on self-determination as it has in the past, update themselves and say this is the basis on which they could talk. Then appeal to the Chinese to talk. If you are not too condemnatory they may respond on the other hand if we are condemnatory, they are unlikely to respond. We should be clear about our objectives and how to go about it. Otherwise, an isolated expression of opinion, however well expressed, will not be effective.

TEMPA TSERING: Tibet's right to self-determination was discussed in international conferences, in 1992 in Permanent Peoples Tribunal, and in London in 1993. Similar resolutions were passed in the European Parliament, Australian Parliament, and the US. Congress. At the two conferences in Strasbourg, involving Peoples Tribunal and in London they invited Chinese lawyers to participate in the proceedings and to put their case. No lawyers were sent to London but some documents were sent on the basis of which discussions took place. In Strasbourg Peoples' Tribunal two Chinese and one Tibetan lawyers participated and then the case was examined. The conclusion reached was that Tibet was an independent nation at least from 1911 onwards. Similarly here in their meeting we are all convinced that Tibet is an independent country.

I would like that in the document we should state that Tibet has the right to self-determination, from independence to autonomy and it is for the Tibetan people who should really determine what they want, and that is very important.

We are living in India. Pandit Nehru had clearly said in the Parliament that the last voice of Tibet should be of the Tibetan people. We have to make a movement from here onwards as to how we can really influence Indian politicians and opinion makers.

Mr. Mehrotra is apprehensive about Tibetan people who may forget what India has done. Generations of Tibetans will not forget what the Government of India did. Of course we do understand India's own position. There is disappointment India could take action which they are not taking, in forums like NAM and forums for Human Rights. Other governments look to what position Government of India is taking or states. India can play a positive role on certain issues. Except for these things by and large Tibetans won't forget what government and people has done for them. There is no doubt at all on this aspect and I can say that on behalf of this generation.

S.D. MUNI: I am wondering if it is possible and desirable for us to have information on the two or three rounds of negotiations between Lhasa and Beijing because that will enlighten us on the actual basis on which Tibet is prepared to negotiate with China and what it expects out of these negotiations. That is an area where there is a considerable darkness and we may be enlightened on it.

VAN PRAAG: In the case of Tibet we should look at self-determination and the question of colonialism, illegal occupation, the question of its status today as an independent state under illegal occupation, and human rights violations, leading to self-determination. Dr. Maprayil in his paper has shown that not only have we to point to the human rights violation for a particular short period of time, there has to be continuum in it, there has to be consistency in human rights violations, because human rights violations makes it impossible for the people to preserve their identity or continue their existence as a people with usurped political rights. In discussing self-determination for Tibet we have to explore the possibility of independence but it need not be independence alone. The proposals Dalai Lama has made are a possible outcome of an exercise in self-determination and negotiations are a part of that. But it should not be focused on that. In other words the Tibetans have not only a right to autonomy, if that is what anybody decides to negotiate, but they have the right to self-determination including the broad spectrum, including independence and it is right therefore what status they decide to negotiate with the Chinese.

In the discussion on self-determination or in the arguing of it we should think of ways in which we can use the Chinese Government's thinking and perspective. They have made numerous statements in which they recognised the distinct identity of the Tibetans, the autonomy of the Tibetans, etc. in the last 40-50 years. Let us research that, let us use that to argue that they too agree with the central point. The only thing they don't agree on is perhaps the method to achieve it. I think that would be a useful exercise.

Each country or each region can have their own arguments in this discussion of self-determination because each country and region has its own experience of self-determination based on their colonial or other experiences, and to use that in the

argument and relate it to Tibet is more useful than having a general theory that we throw at everybody at the same time.

In the past 40 years a lot has been achieved and it is tremendous what the Tibetans have done, what their supporters, including the Indian people, the Indian Government have done, which has brought this issue at international level and attention without the use of violence, which is fairly exceptional. In the last ten years internationally the level of interest has increased enormously and the ground work has been done. The difficulty is to take it now to the next stage. The last five years the movement has had difficulty in moving out of that very fast growth of interest and translating it into something different, into the next step. There is a danger that if it continues too long it may slide back. Everybody in their discussions with the Chinese Government raises Tibet but you can do that for two or three years. After a while it becomes a routine with very little meaning. The same is the case of the United Nations what has been done. We need to think of original things to do. The crucial key element is Asia. We can go far in creating interest in the West but for taking on to the next level it is Asia which can turn things around. China again is somewhat used to the west-bashing and China can use it at this point to say that this is just a old imperialist trick, it is just west against the east, it is just the north against the south and it can rally support from the south by saying that if they allow west to be turn the tide against them then you could be their next victim. If on the other hand if the voice is raised from Asia if not from the government at least from parliamentarians, NGOs and individuals who are close to home, then it defeats the argument that this is only a western perception. It defeats the argument that it is a concoction of the US or the west. I think for Tibet that essential element is lacking. I am not saying that not much has been done here. But it is not sufficient. In Asia and India there is more that has to be done than elsewhere. Asian voice is really the key.

B.C.NIRMAL: The second part of my paper deals with the decolonisation perspective. Seeing the record of third-world countries on human rights front, I personally feel that this may not be a sufficient basis for putting the case of Tibet. It is better that we should also approach the Tibetan issue from the decolonisation perspective. There is another reason also. The United Nations political organs have developed and applied the right of self-determination mainly in the context of decolonisation. So its application in decolonisation context is relatively less controversial.

I have pointed out the basic principles of decolonisation law which are applicable in the case of non-self-governing territory. Although a non-self-governing territory has been interpreted restrictively in the sense of salt water colony, there is no basis for doing so because colonialism by an Asian or African power may be as oppressive and exploitative as European colonialism. 'Colonialism' is a loaded word and moreover the United Nations itself has extended the right of self-

determination in the cases which do not strictly come within the purview of classical or traditional colonialism. For example, Namibia and South Africa, Western Sahara and East Timor. Most of these secessionist movements are self-determination movements have appropriated anti-colonial version of the right of self-determination in support of their movement.

Let us say that Tibet is a non-self-governing State because it fulfils all the requirements of a non-self-governing territory laid down under the relevant resolutions of the United Nations political organs. This is very important because once it is recognised as a non-self-governing State, it will lead to manifold national and international consequences.

First, the Committee of 24 will be permitted to compile information on the decolonisation movement and to orchestrate international action towards furtherance of the movement.

Second, member-states will be obliged not to lend support to a regime considered as an occupying power in breach of the principles of self-determination and aggression.

Third, for the investment that involves exploitation of the human and natural resources of the territory if undertaken without the prior authorisation of the United Nations will be unlawful. You are aware that in Namibia a decree on prohibition of exploitation of natural resources was passed. So the same precedent may be made applicable by the United Nations in case Tibet is recognised as a non-self-governing territory.

Fourth, member-states will be obliged not to recognise the illegal occupation of Tibet by China.

Fifth, they will be permitted to assist in the decolonisation struggle of the Tibetan's national liberation movement.

Sixth, the United Nations will be able to give the official-observer status as to a certain other movements which in turn would entitle them to most rights of United Nations membership. In the United Nations practice many self-determination movements have been recognised as national liberation movements and they were given opportunity to participate in discussions on the rights of self-determination in the General Assembly, and then some of the national liberation movements like SWAPO, PLO and ANC had been accorded observer status at the United Nations. If this approach is followed, Tibet will also be entitled to certain benefits at the United Nations. I think this is a suggestion which is for your consideration. The absence of the observer status for Tibet at the United Nations has made it exceedingly difficult for Tibetan people to be heard and has resulted in their frustration and helplessness. Such development will also have a far-reaching implication for the exercise of the Tibetan's right to self-determination.

Seventh we can authorise the United Nations to apply meaningful sanctions aimed at the expulsion of the colonial aggressor regime.

Finally, it will make the partition of Tibet into central and western Tibet named as the Tibet Autonomous Region and annexation of the provinces of Amdo and Kham by the Chinese as unlawful, which would entitle the ingenious peoples of the entire Tibet to the right of self-determination and provide legal basis for the recognition of the right to return of the Tibetans in Exile to their motherland. Right to return was recognised by the United Nations General Assembly in the Resolutions on Palestinians.

In decolonisation process certain principles have been allowed to override the right to self-determination of the colonial people. *First*, the principle is *uti posseditis*; *second* the historical ties and *third* colonial enclaves in international law.

Uti posseditis principle has been wrongly equated with the territorial integrity of principles. These two principles are quite different. *Uti posseditis* means that a colony has right to self-determination and independence within its boundaries. It has nothing to do with the right to preservation of territorial integrity and political independence of the colonial power. *Uti posseditis* is not applicable.

The second principle is the doctrine of colonial enclave. This argument cannot be applied because you can't say that Tibet is so insignificant in population or resources that Tibet cannot emerge as a viable economic and political entity.

I have concluded that there are no countervailing principle of international law which go against the exercise right of self-determination by the Tibetan people.

Then third part 'Self-determination of Tibetan people the human rights perspective.'

Here the question of determination of the content of the right of self-determination in the non-colonial situation arises. As Prof. Dhokalia pointed out that there are two aspects of the right of self-determination — internal self-determination and external self-determination.

Right to self-determination is a collective human right recognised by Article 1 of the International Covenant of Human Rights. To that extent there is no controversy. But after that there is a lot of controversy. What does this mean in a non-colonial situation? We should distinguish between self-determination as a means and self-determination as an end in itself. If this approach is followed, then there will be very little scope for right of self-determination in the non-colonial situation. If you go through the relevant provision of the Friendly Relations Declaration of 1970 and the Vienna Declaration on Human Rights, we can work out certain criteria for the exercise of the right of self-determination in the non-colonial situation. I think there are two situations in which the right to self-determination can be claimed.

External self-determination can be claimed.

First, as Prof. Praag pointed out where there is a massive violation of human rights and there is no remedy for existing people to save themselves from the genocide, of pressure, terror and tyranny. Their right to self-determination in an external sense may be regarded as valid.

Second, where there is controversy about the sovereignty in itself.

When we look at the Tibetan situation from these two perspectives, we find that Tibet's case is a fit case for the exercise of self-determination.

One, because of massive violation of human rights. The Chinese Government which has failed to promote and protect the human rights of its own people cannot be believed to promote and protect the right of Tibetan people. There is a limit to suggest that persuasion will help and Chinese administration in Tibet may be humanised. They cannot be humanised. They should be dismantled as soon as possible. Only then the violation of human rights will be removed.

Second point is sovereignty issue. China cannot claim, legally speaking, that it has sovereign right over Tibet. Even if Tibet's right to self-determination is a controversial question, even then China's sovereignty also can be questioned. In this case also right to self-determination may be exercised.

Human rights violation constitutes a threat to peace under Article 39 of the UN Charter. The United Nations Security Council if it so wishes can take action. Considering that China is a permanent member of the Security Council this cannot be materialised in the near future. Therefore, the General Assembly may be asked to pass a resolution to the effect that the situation in Tibet endanger international peace and security. Such a Resolution can be passed by the United Nations General Assembly under Article 14 of the UN Charter.

Meanwhile the international community should take steps for containing further damage to Tibet environment and human rights. I have given some suggestions.

The next part of my paper deals with negotiations. Following my earlier contention that there is a sovereignty dispute in Tibet, I have tried to point out that it is an international obligation of China to settle the matter through peaceful means including negotiations. Since China has not made any efforts so far in this regard despite sincere efforts made by His Holiness the Dalai Lama, China has committed a breach of the principle contained in Article 23 and Article 33 of the UN Charter.

PEDRO C. MORENO: In the paper* presented we have highlighted the religious discrimination in Tibet today. In the first part we have listed in brief historical and legal disputes related to the status of Tibet to which I shall not elaborate. This has been done as Michael said earlier for a different audience. The second part, is more relevant gives the religious background specially relating to religion and government in Tibet. I think it is very important to understand the religious perspective since Tibet has a strong religious component and Dalai Lama is identified, at least his office is not only spiritual apart from being political. As a result of this situation many Tibetans feel that with a continuing occupation by China of Tibet they are undermining their religious position of Tibet and they see this as an aggression not only against their own territorial claims but against their culture spiritual identity.

* See ante, pp. 106-126

China views religion as one of the primary hindrances in controlling Tibet. That is not the first case in history. People with strong religious beliefs many times have resisted imposition and tyranny in other countries of the world. The International Commission of Jurists in 1960 cautioned that the Chinese will not permit adherence to and practice of Buddhism in Tibet. The Chinese have systematically set out to eradicate the religious belief in Tibet and that they have placed Tibetan children in material environment so as to alienate them from their religious tradition. During the cultural revolution there was much repression against religion and after the death of Mao Zedong there has been resurgence of religious liberty by Tibetans as a way to express nationalism without being branded as separatists. I think many Tibetans use in their religious background and their religious beliefs and practices to affirm their identity without at the same time being branded as people that want to separate themselves from China. The Chinese Government argues that there are only a few separatists in Tibet. Recently there has been new restriction on the Tibetan religious practices with compulsory political indoctrination in state run schools, prohibition of educating young Tibetans in India, prohibitions of Monks and nuns under 18 years old, banning the pictures of the Dalai Lama and ban on the Communist Party members and the State employees to participate in religious activities or of possession of religious objects.

Of course the constitutional provisions in China support the people's right to religious freedom but that is not practised in reality. Article 36 of the Chinese Constitution states clearly that the state would not come in the way of normal religious activities one can not use religion in activities that disrupts public order or impair the health of citizens. I wonder if they mean mental health as well as physical health. We have also listed other provisions relating to the penal code of the Republic of China, provisions governing the religious activities of foreign nationals within the frontiers of the People's Republic of China and in this case I don't know if Tibetans in exile would be considered foreign nationals from the Chinese perspective. There is a deliberate attempt to use religion in Tibet now to support the Chinese policies and practices towards Tibet, and that is why there is a new training system in Buddhist colleges established by the Chinese Government under the Tibetan Buddhist Association with the supervision of the religious affairs bureau to train patriotic Buddhist Monks and others who will support the Chinese regime and policies towards Tibet.

Among the several cases of religious intolerance that we have listed in the third part of the paper, there is the situation created by the Panchen Lama selected by the Dalai Lama not being recognised by the Chinese Government and instead the Chinese Government choosing their own alternative and about monks and nuns being imprisoned because of peaceful demonstrations. This is documented in the report on religious intolerance by the special rapporteur of the United Nations who visited Tibet in 1994. There are other cases that are also listed in the paper.

What I would like to emphasise in conclusion is that we need to affirm and recognise the close relationship between religion and government that exist in Tibet. The Chinese view religion as an impediment to their control of Tibet, and of course they are now attempting to use religion in their own favour. We should recognise that religious expression should continue to be used in Tibet as a way to bring forth national identity and nationalism. We would like to also explore with you in this workshop how we can may even have to bring legal action on behalf of individuals in Tibet based on human rights claims, maybe with the United Nations Commission on Human Rights and other bodies and of course maybe even the International Court of Justice.

We may during our discussing work out ways and means whereby we could raise awareness on these issues. We may organise an essay contest on Tibet internationally among students and professionals all over the world, work out media coverage, and legal actions in Tibet and internationally, and other steps that can be taken to bring the Tibetan question again to the forefront.

A.P. VENKATESHWARAN: I would just like to say a few things on points which have been raised here. First, why was India so negligent in its dealings with China over Tibet? I think the original sin must go to Great Britain because we became a successor-State to British India when India became independent in 1947. Britain had concocted the theory of suzerainty largely to keep Russia out of Tibet and thereby conceiving suzerainty over Tibet to China. Britain felt they had managed to do it. Britain could afford to do that because Britain had the power to keep China also out of Tibet. Unfortunately when India became independent we were endowed with the great idea of anti-colonialism, anti-imperialism and so on and Nehru was very myopic about what happened in Tibet when China entered Tibet in 1950.

I recall that our first Consul-General to Lhasa sent one of the most dramatic messages to the Government of India in Delhi and the first sentence of that telegram says "The Chinese have entered Tibet, the Himalayas have ceased to exist". He was drawing the attention of the Government of India to the fact that China had now a direct border with India and to that extent India's national security was in jeopardy. Nehru however chose to downplay that aspect and shortly thereafter in 1954 under the agreement on 'trade and intercourse with the Tibet region of China' which India signed with China, we forewent some of the privileges we had inherited from Britain in terms of maintaining a certain element of our own forces in Tibet and gave up certain other rights which we had in Tibet which were inherited from Britain.

Here, the Chinese psychological attitude has also to be taken note of. I may relate an anecdote. When I was Ambassador in China the well-known film *Gandhi* had been produced and although I could not get a copy from Delhi, I managed to get a copy from Columbia Pictures in New York and the President of the Columbia

Pictures was kind enough to send me the copy with Chinese sub-titles. We screened the film about ten times in Beijing and nearby places to invited audiences. I received a request from the Central Committee of the Communist Party whether they could borrow the film to be shown to their high leadership. Naturally I agreed and the film was loaned. I asked my Chinese interlocutor as to who had seen the film and how was it received. He told me everyone had seen the film in the leadership, including Deng Xiaoping. But he looked a little hesitant about saying what their response was. When I pressed him he said "well, you know, it was a very moving film, everyone was very impressed and touched. But no one could understand what this nonviolence was all about." So there is a mental block I think to what I may call a general approach on an issue like nonviolence and the Chinese approach.

When Michael made a comment that Asia needs to be more involved in this question of Tibetan self-determination, it crossed my mind that most countries in Asia being much closer to China are a little hesitant to bring upon themselves the wrath of the Chinese People's Republic and it is this inhibition which has kept the ASEAN countries which are much closer to China from opening their mouth about anything that China is doing and whether it is question of Taiwan, you will find a thundering silence prevailing in these countries, and I am sorry to say in India as well. So, how far we can get Asia involved in this is a very big question mark.

On the strategic aspects of how to move for acceptance of Tibet as a country whose case should be considered in the International Court of Justice it is a very interesting and useful suggestion from Ms. Johnston for having worked in that respect over the last year or so.

The most important question is how the Tibetans themselves look at the issue. There has been some ambivalence on this. When His Holiness suggested first at the US Human Rights Congress in Washington and subsequently in Strasbourg before the European Parliament about extensive autonomy for Tibet, everything to be done by the Tibetans except for say Defence and Foreign Affairs, there was a lot of resistance from the Indo-Tibetan community in Tibet itself. To that extent even His Holiness has refrained from speaking about it in recent years.

It would be useful if in the discussion there is a clear understanding as to how the Tibetans look at it. After all the Seventeen-point agreement which was signed in 1951 whether under duress or not is immaterial, it had provided for enormous amount of autonomy for Tibet and that nothing in Tibet could be changed without His Holiness consent. It was more or less a Strasbourg proposal which was there. There is no doubt that cultural and demographic genocide is being committed in China in Tibet. I recall in the very early years how Tibetan children were being exported to China for being imbued with Chinese cultural values. I recall even their hairstyle was changed. I understand, I am not an expert in this, but I am told that the Tibetan hairstyle was different from the Chinese hairstyle. This was the extent to which they went and Zhou Enlai in one of his very famous meetings with the Chinese Governors

in Tibet suggested that religion could be used also to promote China's hegemony in Tibet. It is one of those things which is on record.

On China itself, it is needless to say it is the most expansionary country in the world. If you look at the Great Wall of China which was supposed to protect the Chinese heartland, you just look at that in the map and where the China now extends into Asia and to other parts down south.

The main argument that is now being used against self-determination, unfortunately, is that it threatens stability. This is particularly so after Bosnia, and sovereign countries everywhere are concerned about stability. That is what they value most, otherwise it challenges their own capacity to control the areas over which they claim sovereignty. That is an aspect also which has to be looked at, how do you convincingly project that there will be minimum amount of instability if one pushes Tibet to be independent which I personally feel is almost an impossible aim to achieve. I am not against trying for the impossible because then you may get something which is possible.

AJIT BHATTARCHARJEA: All the presentations have been really outstanding, but we have been speaking to the converted and we still don't know how the other side would react. The legal cases were very well put and if law was enough Tibet would have been independent by now; but it is not. Why? Because it is essentially a political problem not a legal problem. Law can help but it cannot take the decisive decisions that will make a difference in this matter.

Why have countries including India failed to stand up on this issue? It is very obvious, because many of us, especially those of my own country do not want to antagonise China.

There is also not currently enough evidence from Tibet of a movement for freedom. The exile government and its spokesmen have done very well. But in Tibet itself there have been incidents but no sign of a sustained movement. Without that it is difficult to persuade Governments that the people are really willing to die for freedom or willing to suffer for freedom.

India's approach originated in the bhai-bhai era of Prime Minister Nehru. With the best of intentions he believed that India and China were the two emerging nations; that if they remained on good terms, they would influence the world. I don't think he anticipated that the Tibetans would suffer as much as they have. He had a very wide vision. He probably did not look very closely at what was happening on our borders.

Then we have the strategic problem which was just mentioned. You know China has a nuclear tipped army everybody around them has to be careful and we have had the experience of 1962 behind us. So India has to be particularly careful. So there are strategic reasons for caution. Whether they are enough to excuse this inactivity is a judgement I will not make, but they are there.

There is another vital reason why we think twice about supporting self-determination in Tibet. Because we have similar problems in India. We have Kashmir, the Northeast, etc., where a case can be built up for self-determination. I will not go into it now. But there can be a case. If the Government supports the case of Tibet there will be talk about these territories. So, for a series of reasons; India is cautious. India is not the only country which has these problems. Countries throughout the world have similar problems and are therefore not moving on this problem though their support and sympathies are obvious.

We did try to run some kind of a new service on the Tibetan issue, but the biggest missing element was what is happening in Tibet. Until there is hard evidence of dissatisfaction in Tibet with Chinese rule, it will be difficult to persuade the media and if the media is not persuaded, it will be difficult to persuade governments to take action. As a journalist this is my view.

A.P. VENKATESHWARAN: We know almost every Tibetan group. We cannot expect them to rise in violent revolt, firstly it is not their tradition and secondly it is just not possible when you have such large occupation forces around.

TASHI WANGDI: As a Tibetan I am very much encouraged by the conclusion you have drawn. I think everyone around this table is not, I would not consider anyone as pro-Tibetan, anti-Chinese or supporter of the Tibetan issue. Everyone around here are eminent people in their own right and the conclusion they have drawn are objective assessment of the facts and the realities of the situation.

On the question of self-determination, the historical status of Tibet, the legal status of Tibet, there have been many discussions and conferences and over the years and we have been increasingly encouraged by the similar conclusions drawn in different countries and different fora. The various national parliaments have constituted studies over the years. There have been studies constituted by the German Parliament about 12 or 15 years ago. Besides they have asked their legal division to look at the status of Tibet. They have come to the conclusion that Tibetans have the right to self-determination and they have looked at the historical, legal status of them. The Austrian Government also some years ago asked their experts to look at the issue and they have come to the same conclusion. The US Congress also have some documents, research done on that. So we have this undeniable conclusion of the rights of the Tibetan people, right to self-determination. It is indeed very encouraging to find again these scholars to look at this whole issue, coming to the same conclusion very objectively.

The issue of Tibet's status, legal rights and so on, can be looked at from different viewpoints. There is also the question of history that has been dealt with in detail in the past and also being touched upon. Then there is the question of status of Tibet in international law. That also has been dealt with. Then there is the whole question

of the unique concept in the Central Asian context of priest-patron relationship on which the whole relationship between Tibet and China is based historically. Now that cannot be seen in the context of Euro-centric legal framework of the last century and the present century. So it has to be seen on its own merit.

Looking at the Tibet issue, from different angles, on different grounds, then coming to the same conclusion. That if you look at history, you look at the international status of Tibet in terms of international law, you look at Tibet as the unique relationship between certain periods with Chinese empire or China was under foreign occupation or influences, Mongol, Manchu and so on. Within that particular framework there is the whole notion of self-determination and so on.

One aspect which is very important and which needs to be looked at from entirely a different angle is the analysing the Chinese own statements, their own position, the communist concept of nationality, right to self-determination of nationalities, the Lenin concept of nationality, and how the Chinese Communist Party try to look at their own situation and implement their policies. On the basis of that we should look at the position of Tibet.

Now we have statements of the Chinese Community Party up to late thirties very specifically stating that they support the right to secede for the Tibetans and Mongols. The Community Party of China spoke very strongly in support of this right. So, that is not anyone else speaking about the self-determination and right to secede, even Mao Zedong, Zhou Enlai have spoken on that.

It is important to look at what Lenin said about the whole concept of self-determination, the right to secede and the status of nationality within a state, and how that right can be exercised. Lenin is important because Chinese Communist Government has been quoting him. Lenin says:

By annexation or seizure of foreign territories, the Government understands any incorporation of a small and weak nationality by a large powerful state regardless also of how developed or how backward is the nation forcefully attacked and forcibly detained within the frontiers of a larger state. If any nation, whatsoever is detained by a force within the boundaries of a certain state and if that nation, contrary to its expressed desire, whether such desire is made manifest in the press, national assembly, party's decision or in protest and uprising against the national oppression is not given the right to determine the form of the state life by free voting and completely free from the presence of troops of the annexing or stronger state and without the least pressure, then the adjoining of that nation by a stronger state is annexation. That is seizure by force and violence. No nation can be free if it pressurises other nations.

Now I think this is the framework which fits the Tibetan situation on its own ground. In 1957 there was a high level meeting in China chaired by Zhou Enlai. They met for a number of days to discuss the whole issue of autonomy, self-determination and

lenin's idea of nationality. Zhou Enlai's speech is a very interesting document. When you read it from the beginning to the end, it is full of contradictions. At the beginning he says that then China consisted of many nationalities who had very bad relations for centuries, who even fought wars against each other and after a long period of instability and disintegration they have come together. Then he goes on to say that for centuries all these nationalities lived in great peace and the Russian idea of republics is not applicable to China because they are different nationalities, they live in different parts of China, they are not confined to certain areas. Russia is different. So we can't copy the Soviet Union model for China. Then later on he talks about Tibet. He says the people of Tibet live in a certain confined area and of all these they have the right to demand separate status. But then Tibet has always been a part of China. So it is better for them to be an autonomous region of China. That document needs to be looked at in presenting an argument from the Chinese point of view, whether there is sufficient ground even in terms of the Chinese Government recognition.

Now another interesting document is second forum on Tibet meeting held in 1984 under Hu-Yaobang, then Communist Party Chairman. The whole document talks about Tibet being a very special area historically, culturally, ethnically, it has remained for a very long period of time separate from China, people are different, language different, culture is different and we must look at Tibet as a very special case. It asserted that the Mongols and the Manchus cannot demand similar rights. Now that is Chinese own document. That also is a strong ground.

Then there were other statements of the Communist Party of China in the 1930s.

Then in 1959, Chiang Kai-shek made a public statement in which he said that when Kuomintang government regains control over China Mainland they would recognise and support Tibetan people's right to self-determination. So no one else is talking about it.

When the issue of Tibet came up in the United Nations in 1961-62 and 1965, when for the first time the right to self-determination clause was added, then the Republic of China was member of the Security Council and it was accepted.

We have an important document brought out by Chinese professors of Law, scholars, pro-democratic leaders on the future constitution of China about three years ago. Talking about China as a federal structure for China they said that Tibet is a very special case and Tibet should have a confederal relations within that Constitution and after 20 years the Tibetan people should have the right to secede. That is also recognised by eminent Chinese thinkers and scholars. So that angle also needs to be looked at very closely and especially those political official statement and on their own ground I think needs to be scrutinised.

There is also a famous letter from an eminent young Chinese leader to Deng Xiaoping on the historical and legal claim of the Chinese Government on Tibet.

Mr. Venkateshwaran suggested that Tibet should make their opposition clear. I think in our opposition has been very clear in the last many years. Our position is

approved and agreed to by our Parliament that Tibet historically and legally is an independent country which continues to be under occupation. That is one point.

About the future solution of Tibet we have basically kept our options open. We are willing to discuss any solution. His Holiness has put forward in a concrete proposal in the form of the Five Principles Peace Plan and expansion on it was also proposed. As of now, the ideas put forward by His Holiness in these concrete proposals are still on the table, as far as the Tibetans are concerned. At the same time His Holiness has made it absolutely clear to the Chinese leadership in its letter to Deng Xiaoping about three years ago with a very detailed note that we are also quite willing to discuss any proposals that they may put on the table. That is there to make the whole process of negotiations easier to open up the possibility more widely. His Holiness also said that negotiations should be without any precondition from the Chinese or the Tibetans. So it is again an open agenda. We are willing to enter into it. This position has been very clearly supported by the American, the European Government, not officially, but many of the Asian countries also consider this as a very reasonable proposal. The Parliaments all over the world have supported this question.

So opposition right now is that insofar as the negotiations for future solution we have kept the doors open. We have certain ideas and we have put them on the table and if there are other ideas, we are willing to negotiate. That is the present position.

At the same time His Holiness two years ago made a public statement saying that his effort for direct negotiations has not resulted in any solution. There are reasons why he has adopted a very compromise despite opposition by certain sections of Tibetans. Why he made those proposals at that point was to find a solution and to ease the situation in Tibet so that Tibetan culture, ethnic identity, the environment of Tibet all those central concerns of the His Holiness may be addressed, but it has not yielded any result. On the contrary the conditions are deteriorating. The population transfer is the major problem and consequences of it are becoming more and more threatening. He cannot therefore just wait for solution on the basis of his proposals. So he has to consult the Tibetan people for the solutions and seek what future course of action should be followed. Tibetan people must decide. He has called for a referendum on this. We are in the process of informing people, educating people about the different options, pros and cons and ultimately there will be a referendum and then whatever the verdict of that referendum then that would be the new guideline for the Tibetan Government. But as of now there is nothing of this sort.

Mr. Ajit Bhattacharjee, the opposition in Tibet today, as, insofar as the resistance against Chinese authorities and opposition is concerned, is really remarkable, how people in Tibet in the last 40 odd years have stood up under so much of repression and atrocity. Sometimes the resistance is not very newsworthy or news catching and

to some extent it is because of the nonviolent nature of the whole struggle.

Some years ago when I was in Brussels I met some important journalists and I was trying to inform them about the situation in Tibet. They very pointedly said, you give us some blood, then you will see Tibet in the front page tomorrow. But if you are going to say about human rights, noncooperation and that Chinese are also having difficulties, it would not catch the news headline. So it is unfortunate I think to some extent.

On the other hand if you look at the recent statements coming from the Chinese Party officials in Tibet, they are very much concerned about how widespread the Tibetan liberation movement is. They are saying that the liberation movement has moved from the cities and towns to the countryside from the older generation to the younger generation, to students, even the primary level students. Two years ago there was a statement by the First Secretary to Community Party in Tibet how they should now start working on the children at primary level otherwise if they don't do a very focused reappraisal of education they are going to lose total control, because the children at the primary level are being influenced. In terms of information inflow, he said that they spent millions and millions of Yuan but no one reads it, it does not get anywhere. But the publicity of the Dalai Lama and his group is catching on like wild fire. That is the extent to which the authorities in Tibet feel nervous and the fact that they have kept Tibet closed and the repression methods they are adopting are also reaction to the struggle opposition resistance in Tibet and how these have been gaining ground over the years.

MIRA BHATTARCHARJEA: I will take up the point that Ajit started that the issue of Tibet is really a political issue. We have discussed that briefly. We have talked about why India did not recognise Tibet as independent. We can go back as far as the Asian Relations Conference and we can discuss forever what decisions we made in 1946-47 and again in 1954 because that does not help us very much. I think we have to do two things. We have to look very seriously at the role power plays, the role that national interests and state security play. We have situation in history where the British never recognised Tibet as independent. The Russians at about the same time also played the same sort of game that the British did, recognise Chinese suzerainty over Mongolia and then went on to ensure the growth of a communist party, a social revolution within Mongolia finally leading to its independence. And the reason for this is the role played by the external power.

Today you have much the same problem. You have countries around the world not willing to stand up and recognise Tibet. The UN Senate or the Congress can pass a resolution declaring Tibet as an occupied country, but the Government of the United States still takes a different position and will continue to do so.

With reference to Chiang Kai-shek in Taiwan I had the opportunity sometime ago to speak to a Taiwanese delegation that was visiting India. Their position on Tibet seemed to be that as far as the KMT is concerned, in their constitution that

they still uphold Tibet and Mongolia as integral parts of China. So whatever statements I am afraid that Chiang Kai-shek may have made were tempered by the politics of a particular time. It is very clear that western state interest is visible in the kind of ups and down and peaks and lows that you have of western state interest in China and you can draw a graph. It increases with the degree of concern about China or the hopes that the China system is going to change. It decreases with the strategic or the economic need of partnership with China. What happens then is those who suffer are the Tibetan people, and those who suffer are those perhaps even in India who had joined the cause. Because they then fall by the wayside. So, the Governments, I am afraid, are not to be trusted in this matter. Then it becomes a matter of people and NGOs who unfortunately are powerless.

So we are right back really where we started from and what we do? Is it sufficient to talk about the right in international law of the Tibetan people and whether or not Tibet was an independent State in history. There again history has to be looked at, because it is so very complex, but I won't go into that.

The second point is about self-determination. There is nobody who does not grant that the right to self-determination is a fundamental right. It is not only for the Tibetan people, it is for all people everywhere. One reason why the countries in Asia may not raise their voices against China is because of the acquisition by China of more and more economic and military strength. Also in this case most third-world countries, and particularly the neighbours of China have similar problems at home.

We have to look at ourselves very carefully. We have to discuss with almost brutal frankness the kind of fallout it may have on our state system, on our security, on our stability and I say this with regard to India in particular and keeping China in mind. It is the destabilisation of these two countries. The Yugoslavisation of these two countries will be a phenomenal catastrophe. It will be one that affects not only this region, but the world as a whole.

If the right to self-determination is a fundamental principle applicable to all people, it is also applicable to groups and ethnic groups in Europe. We know that recently the leader of the Basque Movement was arrested. What is being done about that? We know the Scots have for a long time are having a fairly strong movement in Scotland. We know the Welsh want to separate. We know there are a 143 such movements in Europe alone. We know that in Canada Quebec decided differently, not to separate, setting a different example as to what self-determination would mean. This is not a problem that can be treated as unique to Tibet. Whatever solution is found, whatever means and methods are employed, whatever the process, is something that must help willy-nilly to set a precedent internationally, and therefore it concerns us. I say it concerns everybody who is a human being because it does set a precedent and it means that it can apply to groups and peoples elsewhere. The questions that will be asked are many. Who has the right to self-determination. Do my family and I have a right to self-determination? Do we have a right break

up a gathering? So I think we have to look for a solution to the problem that go beyond the Tibet issue, taking the Tibet case as a particularly active case today not only because of the intensity of the movement at present but also because of the presence of the Dalai Lama.

When I say that self-determination is a right to everybody, the other thing we have to keep in mind is to consider the processes and the ways and means of how this has to come about, is to also accept that hatred and violence are not part of the Buddhist tradition and we hope will not be part of any tradition that we may employ from now on. This is important for us and for human kind to avoid hatred, violence and tensions, wars, struggle or whatever will be the end result of it. So, the process that one chooses of, the means that we decide upon, must ensure or should try and ensure that the relationship between say Tibet and China after this process is complete will not be hostile. As far as possible can be cooperative, can be sharing, can be helpful to each other because then that is helpful to us in the region. It is helpful to the world, to humanity as a whole. We can see what will happen if the means that are followed leads to greater tension between Tibet and China. You will see greater and greater militarisation of this region regardless of the fact that you may have the Dalai Lama, celebrate his birthday in Lhasa. But if that is to be, it should be done as amicably as possible.

So, if that is so and if negotiations today have reached a dead end it is because the positions of the two sides are at variance with each other, the concerns are so different. One who are the Tibetan people? Your figure takes into account Tibetans living in Qinghai, in Sichuan, that is, the outside borders of what is known as the Tibet Autonomous Region. The Chinese figures don't treat them as citizens of the TAR. So you have to define what are the territorial borders of Tibet, who are the Tibetan people. You speak for the Tibetan people who are here and the Tibetans who have spread all over the world now. This is one difference. The territory and the extent of who the Tibetan people are.

The other difference is the basis of negotiations. The Chinese have made their bottomline very clear, namely that Tibetans should not question that they are not part of China, then negotiations can begin. They will also not welcome international involvement or internationalisation of the issue which in fact is the strength today of the Tibetan movement. So negotiations are out. At least the basis for negotiations has to be rethought. It means the whole process of struggle has to be given a fresh thinking and I can not foresee any alternate solution at present.

Mr. Wangdi suggested why don't we look at the promises that the Chinese have made and the Chinese promises at least on paper are indeed very promising. promises of national autonomy for Tibet. Tibetan people also have full citizenship rights under the constitution equally with all other Chinese. It seems to me that here then maybe we should consider the possibility of a struggle for civil rights as a prelude to independence. What is missing is the struggle for civil rights. And if the

struggle for civil rights is successful, the rights granted by the constitution are very wide. If the struggle is successful or the struggle gathers momentum, I can envisage a profound change in the relationship between the minority areas or the ethnic areas of China and the Han areas of China, a profound change coming about in the Government of China and a profound change coming about in the international community. A struggle for civil rights on the Martin Luther King pattern borrowing Gandhian philosophy would, to my mind, suit all the problems, avoidance of hatred and violence, avoidance of a conflict. I don't know if you will think that this is a possible solution to consider. But it is one I have been thinking of for the last few days and we have to work out in much more detail in my mind before I can even present it as something for you to consider seriously.

Going back to what Mr. Wangdi said, after this third forum on Tibet, something has changed drastically in the Tibet, in the Chinese approach to Tibet. Reading Chinese material that is coming out there is not much time left now before the Chinese take really drastic measures to ensure their control over Tibet. The Chinese are seeing Tibetan people struggle today also as a part of the policy of the United States' containment of China. They are not able to distinguish between the two. The speeches made by the Chinese leaders from time to time suggest the following: yes, the movement is more widespread, but the movement is now taking on a very different complexion. A kind of a nonviolent nationalist movement, not necessarily for the restoration of any previous order that may have existed in Tibet. It has reached also the monastery and in the case of the selection of Panchen Lama they had hinted that their senior Lama is Cohot, with reference to the Dalai Lama. Reading the speeches it seems that it has also reached the Tibetan Community Party, their complaint seems to be that some members of the Tibetan Communist Party have also become religious and have joined hands with this group. So you can see a nexus between the communist party leaders in Tibet and the monastery, the people and people outside. The Dalai Lama led Tibetan people outside and foreign countries. The Chinese seem to be, as I see it, drawing very tough conclusions from this. I think they are beginning to feel that the time has come to ensure that their control over Tibet is not going to be disturbed because national security is at stake. I think these are concerns we have to take into account. They feel pressured for the first time now since the Deng Xioping regime began. They are beginning to have a sense of being contained and attacked at it were from various sides - Taiwan, even Hong Kong because the United States has also passed the Hong Kong Relations Act, from Tibet from inner Mongolia and Mongolia they are beginning to feel pressured. It is a natural reaction for any State to try and maintain their security. China is a strong state and its economy is not about to collapse. It is a large state and a large state can absorb a lot of folding of business and so on. But it shows no signs at the moment of going to collapse. What seems to be happening instead is that they will reassert their state sovereignty *vis-à-vis* the outside world while opening

up economically and where they are confident. As with Nepal for instance the borders are open. People who come from Tibet tell me that Lhasa is a singing city, you have the latest discos, you can buy the latest fashion and the young are wearing jeans and T-shirts and are becoming more and more absorbed into western culture. Of course protection of Tibetan culture also becomes a problem.

In these speeches and at the Third Forum, the Chinese now seem to suggest that the contradiction between the Dalai Lama and the Chinese, between those who are asking for self-determination and the Chinese is not a contradiction among the people, but a contradiction between the enemy and them, citizens and anti-citizens and the whole treatment now of events, of personnel, of policy and persons in Tibet is based on who supports us and who supports the Dalai Lama and the strength is with them at the moment. At the same time what they are doing is pouring money into Tibet. The rich provinces of China are now committed to helping the economic development of Tibet both in terms of heavy industries, setting up of various enterprises and various other things. In the event of economic prosperity that 'money in your pocket' as Deng Xiaoping said in 1992 when he went south, will tamper the relations between the people of Tibet and of China and that is beginning to be implemented in Tibet. And this has been in Sinkiang. This is on that side.

I feel that it is a time of great urgency. I would say this year, next year until Deng dies, until Hong Kong returns, or certainly the next four years until the end of the century are going to be very critical. So this is the time I feel that this whole question and the means and methods to be adopted and to be rethought both in terms of what is possible. This is really the art of the possible now, what is possible vis-à-vis the present Chinese Government, what is desirable for other countries as the precedent, particularly for the world today where most countries are facing this problem in one way or another, particularly in Asia and from the perspective of building a future that will give us some hope and lasting peace, some roll back of the violence that we have seen for all this century.

A.P. VENKATESHWARAN : I hope your suggestions will bring about lasting peace. But I have my doubts about it.

I would just like to say something here to perhaps give a religious as well as temporal touch. The flag in India has in the middle of it a wheel. Some people think it is a wheel of industry. It is not. It is the Buddhist wheel of *dharma*. And the whole principle or the idea behind the wheel of *dharma* is that it keeps revolving slowly but inexorably. Those who are above will come below and those who are below shall go up.

S. RINPOCHE: More than one speaker has asked about the position of the Tibetans on the future of Tibet. I think it is relevant to clarify what is the exact approach, attitude and position of not only the Tibetans in exile, but Tibetans inside Tibet. The official

position was very well stated by Mr. Tashi Wangdi. I want to add some personal notes and give a little bit of philosophical background to the Tibetan's approach.

We do not see Tibet problem as an isolated problem of an ethnic group or nationality or a country. This is a symptom of a problem of humanity, problem of violence, problem of suppression. So, this has to be seen in that light and we have to search the remedy also in that proportion.

When Siddharth saw the problem of disease, decay and death, through his sensitivity he was able to relate that problem to the entire human beings. Then he changed his course of life and set forth in search of a durable solution for this problem. We have to see the Tibetan problem as an outcome of the problem of humanity. This is not a struggle or a conflict between Tibetans and Chinese, or between political ideologies, nor is it between the ethnic groups, and between religion and secularism, between communism and any other ism, but it is a conflict between the truth and the falsehood; justice and the injustice; righteousness and the wrong. It has a wider implication.

Seeking solution to the Tibetan problem does not constitute anti-Chinese activity, but we are searching a solution to the Tibetan problem for the benefit of the Chinese people, more than the Tibetan people. We are more concerned for the Chinese people because they are in great number compared to the Tibetan people. We are only six million and they are, many thousand millions. The larger proportion of humanity resides in China. The solution to the Tibetan problem is definitely for the benefit of the Chinese people and the entire humanity.

We have to approach the entire problem of Tibet in this light. We have no ill-feelings for the Chinese people. The people of China were a very great neighbour of the Tibetans from the times immemorial. The geographical situation is such that in future also we shall have to remain as neighbours till this globe is intact. We need good neighbours, not an unfriendly neighbour. We have to think for that also. Solution to the Tibetan problem in the long run will benefit the people of China to a great extent.

If we look back at the history, for more than thousand years the people of China benefited culturally, spiritually, religiously and in many other fields from the people of Tibet. The Tibetan people received from China very little and the people of China received a lot of benefits from the people of Tibet. We still wish to continue the relationship of priest and patron, in real sense, and not in a distorted sense as interpreted by some of the modern historians.

What is our demand? We cannot define our demands in the political language because our demand is not a political one. Political independence or political dependence does not carry weight of argument for the people of Tibet. In our approach we never think of demand. We always think of fulfilment of a responsibility — a duty to be performed. The people of Tibet have a specific and a peculiar responsibility towards the entire humanity and the entire sentiment. By virtue of the

nature the Tibetan people have a responsibility to carry the unique culture and spiritual heritage for the sake of the entire sentiment. If the Tibetan people are unable to perform this sacred duty, we shall fail in our duty, accountability, and responsibility. His Holiness always terms this as universal responsibility. This universal responsibility is our first and foremost responsibility and duty to perform. For that the Tibetan people require definite conditions in which this duty can be openly and effectively performed, which is not possible in the present circumstances. The Tibetan people must have the space to live with human dignity and free environment. To perform our duty we need *Swaraj*. The word *Swaraj* has a very deep meaning, it cannot merely be interpreted by freedom or independence or any other thing. *Swaraj* is something in which people can live by themselves in totality and not in fragments. Self is the master of itself and there is no dependence on any other thing as far as to live in total flowering of the goodness and awakening of the intelligence. A person needs a space where he can evolve his own natural flowering in goodness and awakening of his or her total intelligence. That is our requirement and that is what we are looking forward.

His Holiness always says that the future Tibet should be a zone of *Ahimsa* and a sanctuary of environmental preservation. *Ahimsa* is not merely absence of violence, it is something more than that. This thinking is our basic requirement in order to give a proper opportunity to the people of Tibet to perform their legitimate responsibility, and to that end we are looking forward. It may be possible under the political rule of China or it may not be possible unless Tibet becomes politically completely independent. This depends upon the Chinese attitude. If China gives us to have this required environment and situation then there is no need of political independence. Political independence is a very small thing, it is not the end, it is only means for giving us such a situation. Our objective is entirely higher than political independence or freedom, whatever it may be called.

We are aware that this objective cannot be obtained until and unless a complete nonviolent *satyagraha* is started inside Tibet. The conditions we are looking forward to cannot be achieved by international pressure, by war, through the court of law or by any kind of external pressure or force. This has to be created by the Tibetans themselves, from their hearts.

The freedom of Tibet was lost due to degradation of our spiritual tradition. The people of Tibet were not able to maintain the standard of their spirituality and their inner sciences. That was the only reason for Tibet to be captured by the Chinese military forces. The restoration to the previous position will depend on how the Tibetan people purify themselves. Now it is a point of transition. From the point where the Tibetans shall have to move ahead.

His Holiness has already initiated a referendum for the future course of action for the Tibetans which would be hopefully concluded by the end of this year. Thereafter, a section of Tibetans in exile would initiate a movement of *Satyagraha*.

I am personally involved in this process. The concept and plan of action of Satyagraha is published in a small booklet, which has been translated in English and a few other European languages.

In this direction we have three basic commitments—truth, nonviolence and democracy. Many people think that restoration to Tibet's old situation means restoration to the political system which existed before 1959. We are not in favour of restoration of out dated political and administrative system which is absolutely useless for any purpose. The restoration of old system, which I am talking about is, restoration of the space in which the people of Tibet can flower and attain their wisdom. That is the only thing. For that the democratic system now is the best suited system. Although it is not flawless, but amongst any social or political systems it seems to be the best and is also in consonance and conformation with the Buddhist social and organisational systems. Our basic commitments are towards truth, nonviolence and democracy and within this basic commitment *satyagraha* is more suitable action to be performed.

Many people doubt our satyagraha programme because China does not know the language of nonviolence. They feel that Gandhi's satyagraha was successful because it was against the British who believed in the rule of law and had a democratic system and the population of India was much bigger than the British. They therefore argue that in the Tibetan situation satyagraha will not work. I do not subscribe to these arguments. If satyagraha has any value or any force, then it should be more effective against non believers in nonviolence or *Satya*. If *satyagraha* is a force then its effectiveness should not increase or decrease due to the opponent against whom this force is used. If it does not have force, then of course it will not be effective. We are not looking for the result, we are only concerned with our duty. It is our duty to show our disagreement and to find remedy for our problem, otherwise it would mean our agreeing to the existing situation, which we cannot afford to do. Our duty is to perform our legitimate responsibility. Whether it will give result or it will not give result is not our concern. If it gives result, we will not be happy, if it does not give result we will not be sorry. If we are unable to perform our duty we would be very much disappointed and our life would be valueless or useless. Tibet is going to completely vanish from the map of the world. That is almost certain. At this juncture if we are going to completely disappear, then it is better to disappear with some expression of disagreement. It will carry some value in the history of humanity. Our strategy is never with the judgement whether it will or it will not give result. It will only be evaluated on the basis of how far we are pure and how much we are sincere and up to the mark in performing our responsibilities and duties. That was our present situation and I thought it is pertinent to briefly mention this to all of the August gathering here.

VAN PRAAG: The inspiration that Prof. Rinpoche has given us, we can move towards looking at some concrete action, particularly we as people who are neither in Tibet

nor part of the Tibetan community, but we can work together to strengthen whatever movement they have, but work towards the direction they want to go. As non-Tibetan supporters of the Tibetans we fully respect their right to self-determination in their pursuit of path and the goals which may be chosen and at the same time not try to impose on them any solution.

Mrs. Bhattacharjee has outlined the Chinese perception. It is important not to work in isolation from that perception. That is the perception we do not have to submit to it, but we have to be aware of it, so that our responses are adequate.

A number of speakers pointed out the difficulty India and some other countries had in relation to powerful position of China, and also in relation to internal problems within their countries. India has a situation in Kashmir and in the Northeast, and many other countries have similar type of problems. There is, therefore, reluctance of governments to address the question of Tibet in a clear cut manner or in relation to self-determination for fear that it may colour other unrelated political issues. In our discussion and in our plan of action we have to be very clear that we don't mix these things. The situation that India is facing is very distinct and very different intrinsically, and we should not worry too much when we discuss the issue of Tibet, though we remain conscious of these problems.

In relation to the Chinese view of things and in relation to the Indian problems internally with Kashmir, etc., and those of other countries, the situation of Tibet can be turned in favour of resolving these problems. There is a view, as outlined by Tashi Wangdi and Rinpoche that Tibetan expression of self-determination can be solved in a way that it does not harm the central interests of China. In other words, if Tibet gets its way and if it is possible to negotiate a solution within the parameters of what the Tibetans want, in fact it strengthens the position of India in respect of Kashmir, it strengthens the position of every country that has a problem of self-determination because they can say we are not afraid of self-determination because it can be solved in a way which is within the parameters of territorial integrity or other problems like security that we have and we can satisfy the needs of this group of people that has certain demands and requirements.

For China it is the same thing. It is afraid because it is surrounded. The solution is to resolve the Tibetan question, so that at least on one side it is not going to swear any more rather than to amplify that problem so that it is going to feel more and more cornered and it goes on to react stronger and stronger.

What is most important is what action-plan there should be, what can we do in different fora and in different practical ways. That needs to be decided on the basis of questions related to status. Question relating to self-determination and legitimacy are equally important, but this is the kind of preliminary path to that discussion. Basically the discussion is to be on the historical status, the present status and the status of the Tibetan Government in exile.

lastly, on the top the most important thing is to discuss exactly what we are going to do and be precise about it, and who is going to do it, when are we going to do it and how? What means do we have to do it, and let us try to be as realistic as possible in terms of what is politically achievable.

PEDRO MORENO: It is being suggested that the ultimate goal of Tibetans is not political independence, if a zone of peace can be created without even full sovereignty or independence even that will be acceptable to the Tibetans. Prof. Dhokalia has talked about democracy, the legitimacy in terms of consent of the people. If the question is not for political independence but the creation of a zone of peace, then the question is who is authority as long as you have the zone of peace. Is that authority legitimate? We are talking about two different things. Are we concerned about sovereignty and legitimacy of authority? What you are asking is it an end or are you concerned about creating a zone of peace only because it is achievable in a much easier way. While talking about sovereignty that may be much more difficult to achieve and it is not the ultimate end. So I don't know why you think of all this.

VIJAY KRANTI: Mr. Moreno has put the question, in a good way. We must be very sure what we are asking for. The questions of zone of peace or autonomy within the Chinese system, have no meaning and is going to land us back to square one where from things started. Even today we cannot expect more autonomy than what was promised in Seventeen-point Agreement, designed and drafted by people sitting inside Beijing. They did not stick to what they offered in 1951, I doubt there is any change inside Beijing or they would stick more today to the same thing.

The solution to the problem lies in undoing the damage made to the sovereignty, which was taken away and should be returned to Tibet.

We are knocking at a wrong door. We are asking for autonomy and a Zone of Peace from those who do not believe in peace. How many permanent friends China has? How many countries have they stuck to the promises till today? Asking for autonomy is simply wishing away a problem. We are asking for something which is impossible.

The consequences of aggression against Tibet by China, were faced not only by Tibet. Tibet is only one of the issue. Tibet is not the only issue. The countries which faces the consequences include India also. Today India is paying through its poor citizens in maintaining armies on a border which used to be totally peaceful just before this aggression. The money which this country spends today per year to maintain peace on borders can solve the drinking water problem of whole country within one year's budget of that border defence only. We can solve all educational problems if money is not diverted to wrong direction.

I am only saying that the consequence or loss of Tibet's sovereignty concerns not only Tibet, but a much larger area. We are sympathisers of Tibet, we are friends

of Tibet but it doesn't mean that we are going to solve only a part of the problem. Tibet is only the upper string of the cancer. So giving it a good cosmetic shape, is no solution. We are simply running away from the solution. The cancer has to be treated and we should seriously think on basic issues and that is sovereignty.

T.N. CHATURVEDI: In the first place when we talk of the autonomy, or again the reassertion of the Seventeen-point Agreement, the way it was put up by my friend Mehrotra, this the first step, a practical measure without blurring the long-term vision. Approaching like this, we are trying to escape from a situation and it should not be construed that this is the ultimate goal for us. On the other hand, let us also not forget that there is a particular reality of power against which we have to contend. How we should go about it, that becomes an issue. The dialogue is not relegating to the secondary place our ideal of an independent Tibet but to break the stalemate in which we find ourselves after these 35 or 40 years and again to have a feeling that nothing can be done in these conferences, move away from it. So that is the practical formulation though there can be difference or variation of the language.

Secondly, it is obvious that PRC annexed China. It has also been mentioned earlier that there was an illusion even earlier by Kuomintang that these were lost territories and these overseas Chinese, are citizens. There it is a question of their psychology which has been in built over these years. That is the point.

From the viewpoint of legitimacy, I think, the political, historical, and the moral legitimacy are combined. It means creating confidence within the people and in the community. That attribute belongs to Tibet and Tibetan people. The game PRC has been playing over the years is to drive a wedge between His Holiness the Dalai Lama and the people. Some intellectuals are also carried away by the propaganda about the progress of people in Tibet of their being liberated from feudal system and exploitation. But from the angle of legitimacy that the people of Tibet have their own identity, as mentioned very rightly by Dr. Engineer and others, it is a cultural entity as a people that is political, ethnic and religious with its own freedom and philosophy. This identity expresses itself in as a physical embodiment which is visible and more tangible in the form of Dalai Lama. He represents Tibet, and the Tibetan people have the faith in him and that is why, the identity of Tibet or the people of Tibet merges in the identity or the personality of His Holiness the Dalai Lama. He is the real representative, the spiritual, and the political manifestation in whom the international community also has the faith. That is why, this dialogue becomes relevant and it is not as if we are trying something because we have no other means.

On the question of legitimacy many international organisations and State Governments have issued statements and passed resolutions from time to time but have not tried to initiate the process any further, with the result a situation of stagnation has come. This puts a question-mark on the effectiveness of the international organisations. These international organisations or the UN should take more interest.

In the formulation of Mr. Mehrotra individual States were mentioned. Even if some States are not members of the United Nations, their position should be taken into account by the world organisation. Probably if the Tibet issue had been tackled properly, Kuwait could have been much more effectively tackled. The question of Tibet has international repercussions not only for India but for others. I fully agree with Vijay Kranti that for India there are more reasons. This may be interpreted as a parochial view and I am leaving at that. But the point is that it is an international moral and political issue which also has consequences for the future. The similar things can happen again. I agree with Prof. Rinpoche that we have to make a start so that the Tibetanness, and their identity can be saved. That is why the dialogue becomes the first step. There the strong point is that Chinese could be told that they are not even sticking to what they promised, that they should allow an independent group to visit and see if there are any lacunae which could be rectified. That is what I think is the practical way.

AJIT BHATTACHARJEA: The subject before us is 'Collective Human Right of Self Determination.' All of us agree that Tibet has a very good case for self-determination. Now what exactly does that mean in terms of the kind of system that is to be set up? According to the note by Dr. Praag, even after establishing the right to self-determination, the kind of association between the territory that has determined itself and the one from which it has been determined, is open. There are many possibilities, which he has listed in his note. But we have decided that these possibilities should be left to the Tibetan representatives. It is in them to decide what they want to demand — full sovereignty, part sovereignty or whatever.

We seem to be in a bit of a contradiction. Expressing Tibet's claim and Tibet's case as forcefully as possible in legal and other terms has to some extent, also meant condemning China as forcefully as possible. On the other hand, there is another aspect to be considered, that perhaps the objective of this exercise is to put pressure on China with the objective of forcing them to negotiate. In case one must not antagonise them unnecessarily. The focus, and the language which we use, should be very clear. The use of a word like 'genocide' might be correct technically, but nevertheless if we avoid such terms we are more likely to pave the way for negotiations than otherwise. In the entire formulation this point should be kept in mind. We should not even if many of us are angry with the behaviour of the Chinese rulers or the Chinese Government in Tibet, lose sight of the objective of our exercise.

C. MAPRAYIL: In developing human rights argument against Chinese rule there is consensus among us. In my short paper I have highlighted it. The persistent and irresolvable nature should constitute a basis for demanding Chinese withdrawal from Tibet and there comes a time however, practical we would like to be, that we also have to convey the message as briefly, sharply and firmly. I don't think we should be unduly be concerned about embarrassing them. We are not representing any Government, but we have to

convey the message, otherwise there wouldn't be any thing coming from them without trying to wind up the Government.

AJIT BHATTACHARJEA: I don't think there is any confusion on that issue. We are conveying a very clear message. It is only the question of choosing language that is not unnecessarily offensive but yet message gets across, that is the intention.

B.C. NIRMAL: Article 1 of International covenants on Human Rights provides that all people have right to self-determination. By virtue of that right, they have right to pursue their economic, cultural and other kinds of development.

The first question is, whether Tibetans are a people. There should be a specific finding on this that Tibetans are a people. Why? Because of their unique history, long history, the State is an independent State because of their ethnic quality distinct from the Chinese people.

Second we support the right of self-determination because we feel that Chinese aggression of Tibet is violate of the principles of international law, the UN Charter, the Friendly Relations Declaration and the defying of the Commission.

Thirdly, we have evidence, produced before various international bodies and we all testify that massive human rights violations are going on in Tibet. I think these three reasons should be clearly pointed out in the recommendations.

L.L. MEHROTRA: Whenever there is a clash between the principle of self-determination leading to sovereign independence of a State and the territorial integrity of a member-state, by and large the United Nations have upheld the principle of territorial integrity. Only in the cases where the State is totally incapable of maintaining its territorial integrity, that a case is considered, such as in the case of Yugoslavia. There Balkanisation was the natural outcome of a process which the federal Government could not help. The federal institutions in Yugoslavia itself were so feeble and defused in their authority that holding the country together was not feasible when they raised the banner of sovereignty.

AJIT BHATTACHARJEA: Would not China then argue that they can hold Tibet as a matter of territorial integrity?

L.L. MEHROTRA: That has been the Chinese argument. That is why the world community has not been able to move in that.

BANGTAI XU: I am the President of the magazine called the *Spring of China*, published in America for the last 13 years. I understand very little about the Tibetan issue. I was educated in the mainland China and received communist education. The impression about Tibet whatever I have learnt in China was that Tibet was a serf-system where

people worked with implements made from the human skull. After coming out of China, I developed contacts with the Tibetan friends and received some articles from them and started having some understanding about Tibet. I participated in one seminar on Sino-Tibetan Relations in Washington. The Communist Chinese have been making negative propaganda about Tibet. I met His Holiness Dalai Lama in Washington.

My understanding is that Tibetan Human Right issue is not merely a human right issue it is the Chinese human right issue and a political issue. Those who are democratic movement activists in exile are now having further understanding of the Tibetan issue and the Taiwan issue. Most of us feel that there is no problem about the self-determination of Tibet, but it is a big problem for the Chinese. After June last year, the situation on the Taiwan straits became tense. The Communists directed their assault in the Taiwan Straits using both civil and military threats towards Taiwan. Some of our friends made some independent survey. Unfortunately, the attitude of the Chinese people in China is basically supportive of Chinese Government's policy towards Taiwan. I just narrated a joke. Some of my friends were in Hanian talking to a prostitute. Even the prostitutes said that they would support the Government attack on Taiwan. We feel that the last-trump card of the Chinese is nationalism. So my advice to my friends in this forum is that while you discuss the human rights issue you should consider the psychological state of the Chinese people.

The largest overseas organisation opposed to the Chinese Government is ABC. Majority of us in theory support national self-determination, but actually we hope that the ultimate solution of Tibet and other issues would be through a federation. Common dream is to have a free China and a free Tibet. The point is how to reach our goal. In my opinion, if there is no free China, there won't be a free Tibet.

The Communist Party has got three weapons. The three weapons are, *first*: construction of a party, *second*: united front, and *third*: armed struggle. In my opinion, we should also have three weapons to fight the Communist weapon. The *first* weapon is to use opposition parties to fight against the one-party rule. *Second* weapon is to use our United Front to fight the Communist United Front. We should form a United Front between the Taiwan, Tibet and the other exiled democrats. The *third* is the armed struggle. This is the most ferocious weapon of the Communists which is very cruel. Democrats don't have any weapons. In Tibet some small groups are in favour of armed struggle but they are not very effective. The group which has got the best armed weapons are the Taiwan Government. I talked to the Taiwan people, almost nobody was in favour of using arms to fight the Communist China.

How to deal with the Communist armed struggle? The best method is to have nationalisation of Chinese Army. Some say that it is not possible. But the example of Soviet Union, when Yeltsin became the President, the Soviet Army did not shoot him. In Romania it is when Ceausescu became the President, the Soviet Army did not shoot him. We have noticed that recently the American defence forces have increased their contacts with the Chinese Army. My personal view is that it is possible to have peaceful evolution in China because the peaceful

revolution will pay the least price. That is how the Chinese problem and the Tibet's problem will be solved.

Through this seminar I have learnt a lot. I also want to make a proposal. We are willing to see the Chinese, Taiwanese and Tibetans leaders to have dialogue. If Dalai Lama visits Beijing without any condition meets their leaders it also will have a great impact. Now the best tactics of Communist versus the democratic movement is to drive odd activists abroad. So for us, the biggest problem is how to get back. I think, we share the anxiety with all our Tibetan friends who have been in exile for a long time and that is how to get back as soon as possible.

AJIT BHATTACHARJEA : When Prof. Nirmal spoke of the need to give the reasons for Tibetans to support their claim on self-determination I was thinking whether we should also try and frame the case in such a way that other claims of self-determination are not promoted. Thereby what is specially relevant for us in India is Kashmir, maybe the North East and, therefore, the formulation should be specific.

P. MORENO: It will be difficult to distinguish the cases. Quebec people that would not qualify for self-determination, like Africans, Red Indians in the US. Just a few months ago we saw that Quebec had an opportunity to vote and decide about their own fate. So it seems that things change very quickly and it is very difficult for us to have an inflexible and rigid set of rules on the topic.

AJIT BHATTACHARJEA : But the right to self-determination was conceded and they decided to stay with Canada. They could have voted the other way had they wanted to. So the right was not questioned.

C. MAPRAYIL : Tibetan community racially, ethnically, culturally, linguistically has its own identity. It is a separate racial group, they are different from the Chinese unlike Kashmiries. Kashmir is a political, and religious issue. Tibetans are ethnically and racially a different community. We are not trying to dismantle Communist regime or the Chinese Government. We are only talking about allowing the Tibetans to get off the bus where they have been forced to get in. And if it is premised on the 1993 Vienna Declaration and programme of action on human rights.

VAN PRAAG: It will be very difficult to distinguish between two situations. One is the political interest and the other is the legal issue. We have to be careful not to mix the two. There are many lawyers and they would not want to be seen as making a legal determination of any kind that is based on their political objectives. We all realise what the political implications and difficulties are and we will have to be very conscious of that. At the same time we should not make pronouncements which may be seen as allowing the validity of anything that is said because it looks

like as politically motivated. They are trying to construe something that excludes other groups from self-determination when it is actually a principle which is fairly broad. Only its application has different forms — from independence all the way to integration. If we want to emphasise that, that is a possible way.

Secondly, we should make it clear that the Tibetan case is the only one that is being looked at in this particular case. We are not pronouncing ourselves on any other claims to self-determination. We can express the awareness of the other principles that needs to be balanced in it. They may be mentioned as territorial integrity, peace and security, and stability.

As Professor Nirmal has suggested we may state clearly what the Tibetans have and leave it to others to decide whether those criteria are distinguishing from other situations. If the aggression and other criteria are clear, which Mr. Nirmal outlined I would suggest adding colonialism. We can agree to a standard definition which Prof. Dhokalia gave of colonialism. It is dangerous to say that it is only Tibet and to name those that have that right and others don't, because that gets into very difficult terrain.

AJIT BHATTACHARJEA: I was only stressing the need for specifying the reasons for Tibet so that the parallel others would draw is diminished. It may not be comprehensive.

T.N. CHATURVEDI: The two cases of Tibet and Kashmir are not similar. We are here to discuss the case of self-determination for Tibet. That is why, as was said by Prof. Nirmal, we have to make the case somewhat unique and distinctive.

Secondly, there was a decision at a particular point of time, the option was there and that option has been exercised.

Thirdly, a word has been used 'stability'. Considering Tibet not as integral part of China and as upsetting the stability creates many other problems which might even overshadow the Kashmir issue. That issue is a part of the union of States. To the best of our ability the Government is, taking into view the emotional aspects involved, as well as the question of the changes that are taking place. One can go on on this particular issue distinguishing Kashmir from this. It should be clear, as Prof. Nirmal, pointed out that the focus of self determination is for the unique situation of Tibet so that a misunderstanding does not spread.

AJIT BHATTACHARJEA: Though the focus is very clear, political problems remain. Kashmir came up because it is a political problem, that is one of the reasons that prevents the Government of India from supporting this case. We need not take it up here, but to the extent possible the distinction between the two should be made.

NARESH MATHUR: One distinction that we could possibly draw in these two instances is that in the case of Tibet, there is no document of accession either in Tibetan, Republi-

can, or in Communist China. In the case of Kashmir we have this document of accession. So this is one possible base of distinction.

ASGHAR ALI ENGINEER: Another important distinctive feature as far as Kashmir is concerned is that Pakistan was invader and India sent its army to defend it. Whether Hari Singh signed it under duress or not is a different question altogether. But this is very clear that it was Pakistan which was invader and there is evidence on record that India was not even putting pressure on Hari Singh to sign the document of accession. Only when he appealed to India for sending the army that Hari Singh was asked to sign this. Another thing, people of Kashmir rose to oppose Pakistani aggression. Sheikh Abdullah was the most popular leader who symbolised the aspirations of people of Kashmir and he was all for accession with India. As far as occupation is concerned, there is no comparison between the two. But we have a problem on hand and it has to be resolved politically and not by use of force.

L.L. MEHROTRA: Dr. Asghar Ali has very correctly pointed out that Kashmir and Tibet are different situations altogether. Kashmir is a multi-ethnic State. We did not commit aggression in Kashmir, nor did we force Kashmir to accede to India. Kashmiris rose against Pakistan. All those arguments are there. Here we are discussing Tibet and the aspirations of the Tibetan people. Whatever we may say and whatever the world community may do, the response of the Chinese to this issue will not be academic but political. The Chinese may change their stand either because there is an internal situation with which they have to deal and as a consequence of that or there is tremendous political pressure from the world outside and the Chinese have no way of escaping it. If India at any point of time brings up the question of Tibet in the UN and becomes a frontrunner on the issue, the Chinese will definitely, irrespective of the merits of the case, raise the question of Kashmir. So nexus with Kashmir is there from the Chinese point of view, not from our point of view. From our point of view there is nothing similar in the situation that has arisen in Tibet and caused by the Chinese and what Kashmiris face in Kashmir because Kashmir being an integral part of India.

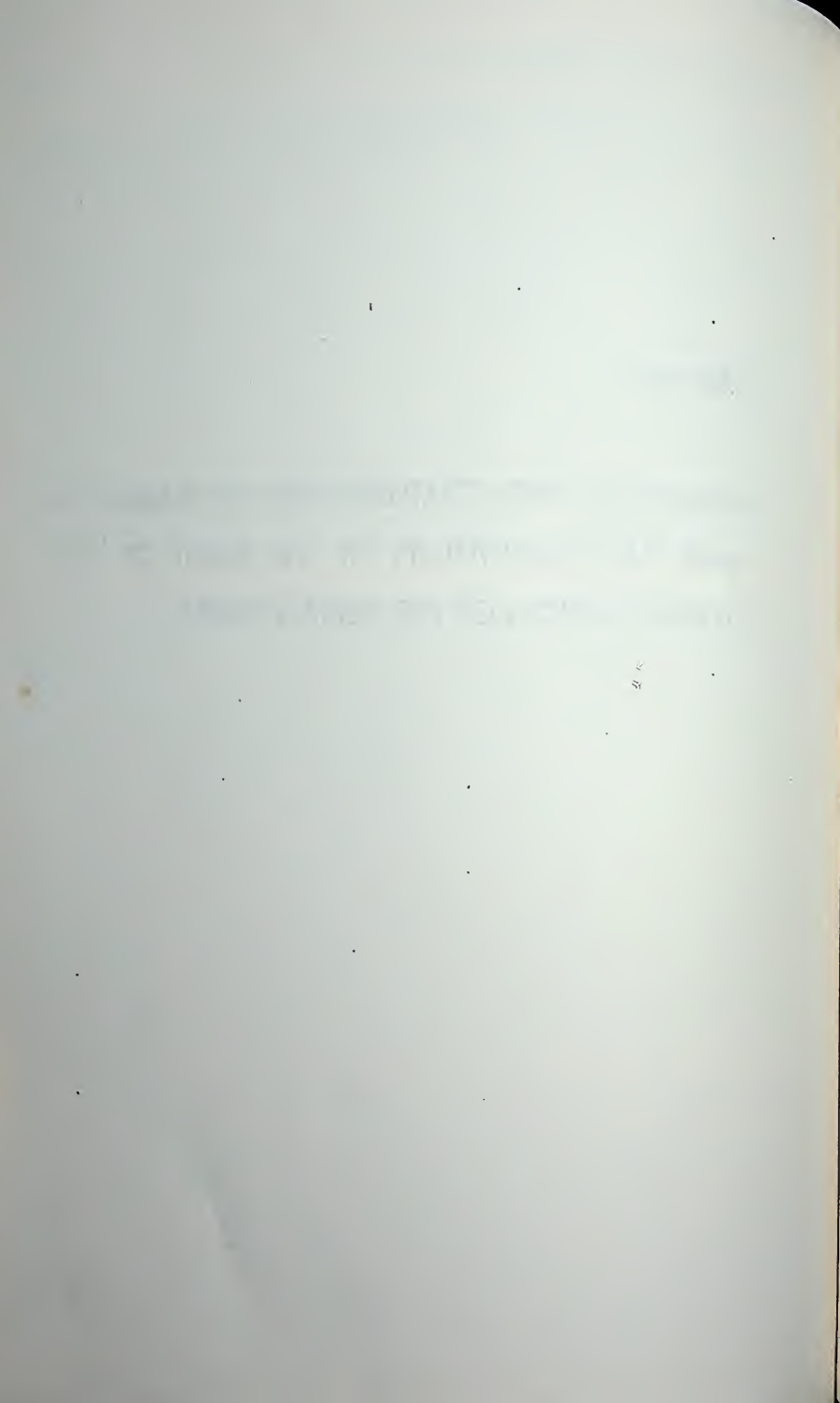
MIRA BHATTACHARJEA: It is being suggested that we must be careful to distinguish the case of Tibet from any other case like Kashmir, in the matter of their right to self-determination. The Tibetan case has been built up on a particular western version of history and a historical record that holds that the Chinese occupation of Tibet is illegal, that Tibet is colonised and, that therefore, Tibet has a right to self-determination. I have some problems with that formulation because there is a different reading of history in this non-western part of the world which does not hold this view, but which does uphold the right of the Tibetan people to self-determination. However, I do not propose to discuss history here.

The world has changed. And, after the collapse of the Soviet Union, the right to self-determination for the various nationalities of the ex-Soviet Union and elsewhere, has now become a magic formula that is in the universal air. No matter how you define it, self-determination is a right that is now accorded to any people anywhere who feel that they would like to separate from the parent country and who choose to exercise their right to self-determination. Whatever formula, solution or means are proposed, for Tibet's struggle for to self-determination will therefore establish an important precedent for those who want self-determination elsewhere. In this matter we have to recognise that we are dealing with a very much larger issue as we deal with the issue of Tibet. For those of us who have a sense of responsibility to the future of human kind, this is important. So the supporting arguments, the means by which Tibetan self-determination is to be gained, the nature of the future relationship between Tibet and China, etc, will add a universal dimension to the problem, of self-determination is important that we bear this other dimension in mind when considering the Tibetan problem.

AJIT BHATTACHARJEA: Mira has amplified a very important issue. I don't think we can avoid it and focus ourselves narrowly, not thinking about what it means for others. Kashmir was a case in point, but certainly there are many other situations. We do also have instances where the exercise of self-determination has not benefited those concerned. This may not be the case of Tibet. That is why, all the more Tibet's particularity should be stressed — otherwise, it causes the kind of problems that Tibet is facing.

PART SIX

MODALITIES AND STRATEGIES FOR THE REALISATION
AND IMPLEMENTATION OF THE RIGHT OF SELF-
DETERMINATION OF THE TIBETAN PEOPLE



MODALITIES AND STRATEGIES

VAN PRAAG: On the status issue, we should discuss ideas in terms of what we might consider doing in terms of action. We should explore the questions arising out of the history, some of the issues that arise from it that may be relevant to formulate today's status of Tibet and the consequences. In particular, for example, consequences in relation to population transfer. Even if Tibet is a legally occupied country then population transfer is illegal by virtue of the Geneva Convention and therefore that issue has a consequence.

What are the possible courses of action with regard to recognition of the Tibetan Government in Exile? There are a number of precedents for recognition of governments in exile during the World War II, but even more recently like Haiti, or recognition of the liberation movement. These are important topics of discussion because it may contain some real advancement of the Tibetan issue from the status, legal and political point of view.

Secondly, on the basis of discussion of legal issue focus on action in future, on the question of the legitimacy of China's claim to Tibet. This is of very great importance because China has got used to criticism of its human rights policy and that does not seem to pose a problem for China. It is only an irritant in the conduct of its international relations. It is something they have got accustomed to as being a consequence of their regime. On the other hand any challenge to the legitimacy of the Chinese Government in relation to Tibet, also in relation to other parts, is a very sore point. What we have to try to do is not to tie its legs, irritate more than needed, but put pressure on China to do something on Tibet and question China's legitimate claim on Tibet. Systematically there should be a fundamental debate so that the Chinese Government feels that there is something wrong in their argument and they are weak and therefore vulnerable. Any challenge to the legitimacy of the Chinese rule or any part of what they considered to be China is a challenge in some psychological way to the rule of that party, chairman or the president to the entire territory of China. This is a beginning of a challenge to their authority and that is a big threat to China. I am not suggesting that we should try to push China to a corner. On the other hand raising that question is showing we are getting serious about Tibet and it has serious consequences for them.

Prof. Rinpoche had said that we talk a lot of things theoretically, we have shown that certain things are right and certain things are wrong, but political will is not there and the world seems to be worried very little about Tibet because China is a powerful country. That certainly is a very realistic way of viewing the situation and this requires: *First*, continuation and the intensification of the work that we do specifically on Tibet; and *secondly*, work in a more conceptual and political way in terms of changing the perception and the way in which governments act generally. In other words, one is a shift of attitude towards Tibet; the other is a shift in the view on the way in which the Government conducts its foreign policy in a principled way and to look into some of the principles they should use for attaining it. That, of course, is a long-term thing.

We are in a period of change which is fast but there are ways in which one can influence the thinking even of the major powers because after the cold war there is in a vacuum as to what their foreign policy should be, people are looking for principles on which they can base their foreign policy. We must therefore think also in terms of how we can influence some of the thinking that may affect the way in which a certain issue should be viewed and resolved.

CLAUDIA JOHNSTON: I am working on the strategy for Tibet, a strategy that has developed through consultations with the international community, and the opportunity to speak to the western members and the United Nations. We consulted several UN Mission Legal Advisors. I have spoken to a former judge on the ICJ Bench. So, the recommendations and the suggestions that I make have come from professional suggestions.

What we have all concluded so far is that we require an opportunity to demonstrate the legitimate Tibetan Government and also its rights as a people. We also need to find a forum in which we can demonstrate the illegal conduct of China and the subsequent illegal control over the Tibetan State.

Negotiations are the best way to go, but we all recognise that we have not really seen any progress. I would agree with Michael that we need to come up with some strategies that are going to make the Chinese question their own position. Also by providing documentation about the illegal nature of the Chinese control of Tibet, we will be able to give the documentation and any information to the international community, so that they can start to see realistically and legally why Tibet deserves an opportunity to resolve the situation.

I have suggested a three-step strategy to self-determination. The main focus is to identify and provide a process of obligating and engaging the international community.

Of all the things that need to be done and according to other precedents we need to irrefutably prove to the international community that the situation in Tibet is illegal and illegitimate. There are reasons for this.

First is by proving the 'illegal seizure' of Tibetan territory, and this is a definite semantic definition than occupation. Occupation in itself can be legal and we put ourselves in a very tenuous situation when we try to promote the issue that Tibet is illegally occupied. There is no question that it is illegally occupied. But if we were to go to the court and we want to try to prove that Tibet is illegally occupied, the Chinese take the defence that it was a legal occupation because they had been promoting and financing Tibet which under the terms of an international definition is a legal occupation. If we go to the court and try to argue, the Chinese would have a defence. However, if we went to court and argue that the Chinese have in fact seized Tibetan territory, there is no argument because you can't seize something that was not originally yours in the first place. So, we have to be careful and we have to be very realistic about the importance of semantics in international law.

If we are able to irrefutably prove that this is an illegal and illegitimate situation it gives us the opportunity to demonstrate to the international community that in fact this is a *bona fide* dispute between the state of Tibet and the State of China. What does that mean? China has been a member of the Security Council and had the opportunity to veto and block any kind of Tibetan initiative all these years because they claimed that this is an internal affair of China and therefore the international communities may well keep their hands off. It is our responsibility to demonstrate that this is not an internal affair. We have the historical facts and we are confident of those facts but we have to take them to a legal forum and demonstrate them to the international community. The advantage of that is that once we irrefutably prove that this is a legal dispute, we demonstrate that China is a party to that dispute, and under the UN Charter, Chapter 5 of the Security Council order for 27 programme (3) any party to the dispute, which in this case is China, is obligated to abstain from voting. That is one of the major issues to get China realise that it is a party to the dispute and that it is not their internal affair and the UN move is not interference in their internal affairs.

Namibia is a very important precedent and has very important parallels with the Tibetan situation. Namibia was historically its own peoples. It was colonised by Germany and then after the war the Allies took it over as a mandate. They took this as a situation of decolonisation and allowed Southwest Africa to act as the administrative authority over Namibia. The parallel between Namibia and Tibet is that the actions of Southwest Africa betrayed the UN trust of helping the Namibian people attain their independence and instead they annexed the territory and imposed *apartheid*. Namibia was a part of the mandate system in the UN, and it was watching what was going on. Unfortunately, the UN is not watching what has been going on periodically in Tibet, but the United Nations identified that there was an illegal situation going on in Namibia. What South Africa was doing was indeed illegitimate and illegal. So they revoked their authority over the Namibian people and they elected a Council for Namibia. There is a parallel; the parallel

is that there was an illegal situation in Namibia and there is an illegal situation in Tibet. The opportunity is that if we demonstrate irrefutably the illegal and illegitimate situation in Tibet, then it is incumbent upon the international community to do something about the illegal situation. It obligates them under the Charter to do something.

In contrast to this I will give you another example of what is the difference between obligated and not-obligated. The Franco regime in Spain was horrendous. It came to the attention of the Security Council which recommended to the international community that they should not recognise this regime and instead should try to promote another regime to take its place. There was some consideration and some action. However, it died out because there was not enough evidence to demonstrate that the situation was illegal and illegitimate. There was, therefore, no obligation on behalf of the international community to do something. However, in the case of Namibia the illegality was clearly identified and it obligated the community to do something. The UN therefore first set up a Council for Namibia and international community was convinced that this Council was the only true representative of the Namibian people. That Council received international recognition and was able to even sign treaties.

Another Namibian precedent which also acts as an opportunity for Tibet is that compelled by the international community in 1971 the International Court of Justice took a position that the Southwest Africa was illegally present in Namibia. So here is precedent that we can follow and pursue. If we go to the ICJ it will be demonstrated that Tibet is an independent State which can gain access to the ICJ but even if we get a judgement that China has wronged what happens? How is it going to affect China? How can we use the ICJ to the best of our advantage? The best advantage is being able to use the ICJ opinion to demonstrate to the international community how they could deal with the situation. We all know that the international community is very confused having to deal with this situation and that would give us an opportunity. Also we shall be able to demonstrate that this illegal and illegitimate situation gives them the opportunity under the UN Charter to revoke sanctions. Southwest Africa was very reluctant to move out of Namibia and it was only after significant period of time through the pressure of sanctions that they finally came to the negotiating table.

The economic situation in China is very unstable and Canada Business Group has compiled a report on China's business failures and are trying to influence a group of businesses to reconsider their serious investments within China. These kinds of business measures have been successful in the past and it can be successful in the future. Up to this time the pressures have been diplomatic but now we have got to break all obstacles and get the opportunity.

By proving the illegal conduct of China it is theoretically possible to launch a legal assault through Federal Court jurisdiction and the case suit could be in the form of legal action.

The arguments at the Federal Court would be that the US business group had gained access to the Tibetan property through China whose presence in Tibet is illegal, and whose actions in Tibet constitute criminal acts and gross violations of human rights which is illegal under the Tort law and violation of the international law. I will give you an example of how it is theoretically possible. At present there are 145 foreign mining companies in Tibet. By suing the US mining company in the Federal Court of the United States for breach of the treaty, breach of the Charter, the Federal Court is in a position to uphold the Charter and the Treaty over the rights of the business. This is an opportunity to dissuade businesses interests from operating at present in Tibet.

The UN member-States are bound through the obligation of the Pact of Paris Treaty signed in 1928, which was one of the precursor to the League of Nations. The essence of treaty was an agreement which bound the states not to recognise any government that has come about as a result of "the fruits of aggression". The Pact of Paris was incorporated as an obligation within the League of Nations covenant under the Stimson doctrine. So it is the of the obligation at the international community not to recognise any government that has come about as the result of the fruits of aggression, and this has present-day legal validity. But we have to demonstrate that the situation in Tibet is in fact illegal.

Achieving self-determination implies international recognition of the right to independence. That it has been well documented and we should be very confident that the evidence is there to promote this. When I had consultations it became evident that the international community has reservations about premature recognition like in the case of Bosnia, and so the international community before rallying behind anybody else wants to be ensured that the State is economically and politically viable at the international level. You do not require international support to prove that a state's claim to self-determination. But the Tibetan Government is an excellent position for that kind of support because at present they operate a very functional domestic government. The only thing that needs to be done is that their domestic government which has all the departments needs to be raised to the international level. They have the expertise, they have strategic liaisons around the globe.

So how does that happen? In the case of Namibia the Council joined international organisations which implied that they received international recognition. Michael also talked about the same thing. Namibia joined Unesco, ILO, WHO and FAO, and they also signed peace treaties. Now there is an opportunity. Already the Tibetan Government in Exile belongs to several international organisations. So that needs to be expanded. The other opportunity for international recognition is accorded through bilateral treaties which are legal and international instruments. Bilateral treaties could be with regard to commerce and international alliances. When I was in New York I picked up this book, *Bilateral Investment Treaties* which lists out examples giving the content and model of those treaties.

Besides bilateral investment treaties there is the importance of the historical recognition. Michael and other participants have done an incredible amount of work, and we need a forum to be able to demonstrate that.

Another opportunity with particular regard to the territory is that in 1950 El Salvador raised an issue with regard to the invasion of the Tibetan territory. A general committee was set up to take this under consideration. At that time El Salvador made the effort to prove that Tibet is an independent State by using newspaper articles and encyclopaedias as source material because they were publicly recognised documents. However the committee opined that these were not international instruments like international treaties and the issue was postponed indefinitely. There is an opportunity perhaps to open up the case and prove with the evidence as available that in fact the Tibetan Government has been recognised historically as an independent State and we can also demonstrate that the Tibetan Government in exile is functioning independently as representing that state.

We all know and understand that Tibetans have the right to self-determination. We need to identify and engage a process to realise that self-determination. There is a window of opportunity. I am in complete agreement with the research supported by Dr. Nirmal and Dr. Dhokalia about the opportunities of decolonisation. The Trusteeship Council of the United Nations is the permanent part as per the UN Charter and is successful with its decolonisation agenda. Many believe that the Council is defunct but that is not true. We need to understand the processes for making an application to the Trusteeship Council because it is this organ that has mediation and an effective mandate. The process involves that a member-State moves an application with the Trusteeship Council to take action. We have therefore to identify a country willing to move an application and put the question of Tibet on the agenda of the Trusteeship Council, and the opportunity is ripe because there is nothing on the agenda. Once something is put on the agenda through the *bona fide* process, the committee is obliged to meet.

Another window of opportunity is that there is a proposal put forward in 1991 to consider changing the Trusteeship Council into some kind of an environmental awareness group. This would require amendment to the Charter since the Trusteeship Council is a permanent part of the UN as per its Charter. So it is not likely that that is going to be changed. But it is on the agenda of the General Assembly. There is an opportunity for us there. All legal advisors are required to make a submission regarding the possibility of revising a Trusteeship Council. What does it mean for us? It means that we can lobby with the legal advisors of the various missions for the UN and suggest that indeed the Trusteeship Council should be revived and there is tremendous evidence within the international community that that is self-determination and decolonisation issues still needs to be taken up.

We have contacted some of these missions and they were all receptive to the idea of receiving a draft on the future possibility of continuance or revision of the Trusteeship Council. I consulted Mr. Mastiff, UN administrator responsible for the trusteeship council in Europe and he is receptive to the idea.

Now I also agree with the opportunity of negotiating along the lines of the Vatican precedent of an independent state. I think that has real value particularly because the Tibetan situation and HH the Dalai Lama. So I would encourage that.

Now how to have an access to the International Court of Justice? It is catch-22 situation where they accept Tibetan Government in Exile as being an independent since the ICJ is specifically for inter-State disputes. So we would need to have a forum where we can demonstrate irrefutably that Tibet indeed was an independent state and has a right of access to International Court of Justice. One suggestion was to develop a case on the genocide issue. Dr Nirmal suggested how one could formulate a case of genocide and how that would work is that China being a party to the genocide convention can be sued on behalf of Tibet by another member-State of the UN, who is also a party to the convention, and this would bring the greatest pressure to bear on China. Also we can use the rationale that this case was an effort to demonstrate the right of self-determination in a situation of mass violation of human rights. We need to identify with the processes if we have to bring the Tibet issue into international attention.

Now how did it work on Namibia, I will just give you the short history. *First* of all the UN accepted the documentation that the Southwest Africa presence in Namibia was illegal. *Second*, it appointed a council for Namibia and instructed the international community that this was the only true representative of the Namibian people. The Namibian Council acted as the legal representative and joined international organisations and was able to demonstrate and assume international recognition. They signed International Convention to Eliminate All Ways of Discrimination, International Convention on Suppression and Punishment of Apartheid, the UN Convention on the Law of the Sea, the Geneva Convention on laws of War and the Vienna Convention on Laws of Treaty. It is fantastic that Namibia was able to sign all of these treaties and had international recognition when they were only a council and were not a government. That way Tibet has a government and their position is strong and they deserve international recognition.

In conclusion, I think, not only do we need to identify what we should do, but we also need to identify who is going to do it.

B.C. NIRMAL: There are four five possible approaches to deal with the issue of self-determination within and outside the United Nations framework.

1. *Decolonisation Approach.* The concept of 'colonialism' is a loaded term. It deals with alien subjugation, domination and aspiration. If it can be stated that a situation in Tibet is of colonialism then we can argue that 1960 declaration on decolonisation is relevant. If this proposition is accepted we can recommend that the General Assembly should extend the mandate of the 'special committee on decolonisation' to include Tibet.
2. *Human Rights Approach.* There is already a resolution of the UN Sub-commission on the Prevention of Discrimination and Protection of Minorities by which the Human Rights Commission was requested to appoint a special rapporteur on Tibet. We can suggest that the issue has acquired urgency and the Human Rights Commission should appoint a special rapporteur.
3. *International Peace and Security Approach and its Enforcement or Force Method.* This is not likely to materialise but it is very important. In recent years the Security Council has given extensive meaning to the term 'international security' by linking it to the principles of human rights, humanitarianism, democracy and self-determination. As far as international law is concerned this approach is very much satisfying to the argument whether it is going to be implemented is another thing.
4. *Self-determination and Independence.* This formulations was given support to in a resolution of the UN which has given the impression that independence is the only mode of sufficing self-determination. On the other hand the Friendly Relation Declaration, 1970, provides that self-determination right can be exercised in either of the following ways. a) independence, b) free association, c) integration, and d) any political status agreed upon by the parties concerned.

We could suggest that the Government of China and the Tibetan Government in Exile should without any condition enter into negotiations to facilitate exercise of the right to self-determination. An argument can be made that they have been negotiating. Negotiation for negotiation sake, however, cannot be successful. A judge of International Court of Justice, had opined that negotiations should be conducted in good faith. That good faith is missing so far. If both parties are interested to find out a solution they can find out a solution. For example, in the case Namibia, the Security Council had established the United Nations Voluntary Administration Group but they waited for so many years, and it was only in 1990 that the goal of independence was achieved by the people. So negotiations should take place in good faith. These are some of the observations which I wanted to make.

J.M. MUKHI: You have made four suggestion. I don't think they are necessarily in the alternative. Some of them can be simultaneous.

NARESH MATHUR: In United Nations Commission on Human Rights there are two groups north and south, with the south being led by China, and the voting pattern makes no resolution possible in favour of Tibet. How could that be analysed? Once we have a resolution from the Human Rights Commission on the human rights persistent violation it would help. I cannot understand the UN framework but there could be resolution on the right to democracy, representation, free elections, etc. So I am just wondering that twice in the Human Rights Commission there was a negative vote against Tibet and they refused to vote against China. I understand it fell short by a few votes if we would have had the support of a few African states the voting pattern could have tilted. Definitely it will be tried again. India also voted against the resolution and supported China.

KARMA CHOEPHEL: We are trying. Since 1985 we have tried to put through a resolution on Tibet at the UN Commission and also in the Sub-Commission for Minorities. In the resolutions India also has always supported China which claims that there is no violation of human rights. NGOs are also talking about the violations of human rights. Since last two years we are trying to educate public and governments of what is happenings. We are targeting the Chinese people also. A number of Chinese residing abroad are not aware of the conditions of Tibet and low Chinese Communist line.

J.M. MUKHI: How does that relate to what Prof. Nirmal said about the appointment of the special rapporteur which has not been done. Who has not done it and why?

KARMA CHOEPHEL: The special rapporteur is to be appointed by the resolution. Unless we have a resolution which say that such rapporteurs should be appointed we can't have a rapporteur and the resolution has to be quite explicit.

NARESH MATHUR: He spoke of rapporteurs being appointed in case of minorities. One little known fact of which we should all be ashamed is that India votes against resolution on discrimination on human rights in Tibet and in support of no action against it. It is completely incomprehensible.

J.M. MUKHI: I wanted that to be discussed. When we were discussing as to what ought to be according to a viable stand taken by the Government of India. We all know of our limitations but what is it that the Government of India ought to do in our opinion.

NARESH MATHUR: Every country that is listed has skeletons in the cupboard. Nobody is really going by China's professed statement that its human rights are not violated, this is lot of cock and bull.

R.P. DHOKALIA: We are not here to formulate a strategy because we have no power of any kind. We can just recommend. The strategy is to be made by the Tibetans, by Government of India, or China. They all have skeletons in their cupboard but how is it a matter of our concern? We should know exactly what the ought prescription is in the matter under our scrutiny.

When you go to the Court you know exactly what are the rules. If theft has taken place, you apply the relevant law, whether the theft is committed by ordinary person or by a VIP is immaterial? For a judge both are equal under the rule of law. International law has no codified constitution like the municipal statute. Dr. Nirmal is very good analyst of contemporary international law of self-determination. There are books on the subject based on historical records conclusively proving the case of Tibet. International law provisions require conclusive proof for a good case. Political analysis on the other hand goes into all kinds of details and pressures to find what is politically possible. The object of the workshop was to clarify the hypothetical situation of what happens if a country occupies another territory and enslaves people by controlling them. You have analysed in what situations it is legitimate and in what situations it is not.

We have apparently come to the conclusion that Chinese exercise of state authority over Tibetan people is illegal and has no legitimacy. We have also concluded that the right of self-determination of Tibetan people is legitimate. Now why are we beating about the bush. First it was said that there was no theory, let us concretise it. There are all kinds of exceptions in all situations as far as politics is concerned.

Self-determination concept has been transformed through three stages. Hypothetically we are deciding that in a particular situation human right protection is required, in next situation, self-rule and autonomy of particular kind is required, and in a particular situation if nothing happens, self-determination may mean independence. We must be clear in what situation it should be independence. Whatever may be the constraints of the parties concerned, or constraints of Government of India or of PR China what is the real situation today which prevails in Tibet. Neither the Government of India nor of China are going to listen to you. Hundreds of seminars are held but who bothers. We are bothering as if our findings and recommendations will be seriously examined by the Governments concerned. Nobody is going to look at your findings. What we think appropriate and just we should put forward in a straight forward manner whether or not these are acceptable to governments or accepted by the Tibetan people. We should examine this question objectively. If we are convinced that Tibetans are not entitled to independence let us say so and, if they are entitled to independence, let us put forward the modalities and how they should proceed. We should tell them that if there are human rights violations they should get these redressed through Human Rights Committee and the Commission. Other organisations concerned with Tibetan cause may also address the issue to them. An organisation in London is preparing a documentary

evidence on human right violations in Tibet. Every month they issue a report on situation of human rights in Tibet. In case there is genocide in Tibet, the UN can be approached for providing effective remedy. The UNO has limitations, and they may not be able to do anything, but if UN can be asked to provide some relief, we may think of some modalities of seeking relief for the Tibetan people who are victims.

We are aware about the Tibetan territories being incorporated into the Chinese territory. Their country is being raped and that it is patently illegal situation created by transfer of people, changing the population proportion in occupied Tibet. We also know now that if there is a plebiscite or referendum the result will be negative because of demographic change.

We are further concerned with the modalities, of exercising the right of self-determination by Tibetans. How in the case of Tibetan people the protection of human rights can be brought about? How can genocide be stopped? How can the UN be approached? If demographic aggression is not stopped any plebiscite if held will have no meaning.

Similarly there arises a question of repatriation of refugees. They don't have homes, they are here in India and spread elsewhere. How can the identity of the Tibetan people, which has been totally obliterated, be restored?

If independence of Tibet is a solution, how can it be brought about? Can it be through international pressure? China is a mighty nation. Had it been merely a Haiti anybody could have marched on to elaborate Tibetan people.

Objectively what we think right should be said, in an objective manner and we should not bother about what are the political compulsions of China, India or of the Tibetan government here, which is not recognised at all.

L.L. MEHROTRA: We should concretely examine:

- (i) Whether the UN General Assembly should pass another resolution renewing its call for the restoration of human rights in Tibet and implementation of their right to self-determination?
- (ii) Whether the member-States of the United Nations should extend their moral and material support to Tibet much more forthrightly than they have done so far?
- (iii) Whether the UNO could declare Tibet as a non-self-governing and occupied territory in view of the fact that the Chinese are present there in massive military form as well as the Han race is now over-powering the Tibetan race by changing the very demographic complexion of Tibet?
- (iv) Whether there is a colonial situation in Tibet today? And if that be so, whether all the facets of decolonisation through which the large number of member-States of the United Nations have gone before attaining their independence in the 20th century, whether all those provisions be applied to Tibet?

- (v) Whether the UN Commission on Human Rights should appoint a special rapporteur for Tibet as it has in many other human rights situation?
- (vi) Whether international financial institutions can come to Tibet's help in one way or the other recognising China's sovereignty and yet offering a hand of help to Tibet for its development as an autonomous region?
- (vii) Whether the UN Development Commission would look at the state of deforestation that has denuded Tibet of its forest wealth and examine whether the nuclear dumps are affecting adversely the very reservoir of water that sustains this sub-continent of South Asia? The Indus, the Brahmaputra, the Ganga, the Mekon — all the major rivers of South and South East Asia spring from Tibet, and Tibet is the largest subterranean reservoir of water sustaining the largest rivers on this globe. What are the Chinese doing to that environmental system?
- (viii) Whether governments in their bilateral talks with China, as two sovereign nations, can bring to the notice of China what they feel about Tibet?
- (ix) Whether an international conference on Tibet can be called by the United Nations in view of the gravity of the situation in Tibet?
- (x) Whether a plebiscite could be held in Tibet on the basis of self-determination to ascertain their wishes as to which way they want to go?

These are just a few issues apart from a number of other issues may be examined.

VAN PRAAG: Let us workout a Plan of Action from the point of view of our discussion on legitimacy, Status and Self-determination. The following are the broad categories which have emerged from our discussions.

- A: Research, Writing and Publication
- B: Work in International organisations and the United Nations
- C: Work at the International Court of Justice
- D: Work at National Courts
- E: Lobbying with Governments —Executive and Legislative
- F: Work in China
- G: Role of the NGOS
- H: Media, and
- I : Future of Tibet.

It would be useful to write some kind of a brief on the issue of a *status*. A lot has been written already but something very concise, as a legal brief. Also on the concept of self-determination as it flows from discussion on status or maybe separately from

that. A new legal brief be written. There is a lot of new material that could be used and it could be improved on considerably. So it may be a good time to do that. And it is useful tool for lobbying to get the governments as well.

J.M. MUKHI: There could be a mock hearing for the ICJ, for example, or any international tribunal, complete with pleadings and supporting documents. That would be very useful.

VAN PRAAG: That is a very useful idea, a test of the extent to which some of things can be defended. That would also help in what was said about the Chinese point of view, it will be useful to do an investigation to the extent that has been said already or to compliment it or to fill it, the Chinese statements and point of view on the status of Tibet, the strength of their argument and to see to what extent those strong arguments can be responded to. Unless we understand their point of view, it is very difficult to know how strong the Tibetan case is. So, that may be a project that would be useful.

NARESH MATHUR: On the question of historical status we need not necessarily be contending or competing histories, the Chinese versions or Chinese annals of the dynasties, I think we can take a broader range of perspectives of the other nation-States in Central Asia. Mongolia, the Manchus, Turkistan, and Russia had a definite perceptions of Tibet. I would broadbase these historical perspectives to, for instance, the secret history of the Mongols and include that because otherwise you are left with only Tibet which was not recording history and we have the Han historians from 2001 BC.

L.L. MEHROTRA : Until the British came on the Indian scene, India would never have even remotely imagined that Tibet was a part of China, it was inconceivable from the Indian point of view .

VAN PRAAG: What is very important is to concentrate either on documents from Central Asian point of view of the historical and contemporary status of Tibet. That perception has to be dealt with either in the same document or in a separate one, whatever seems to be best.

NARESH MATHUR: This is crucial, for the reason that we are basing it all on historical facts. In Chinese documentation they give historical reasons for the legal ownership of Tibet and when we give the historical fact we should be accurate.

VAN PRAAG: Should there be something that should be written in a broader perspective not specifically Tibet oriented in terms of the status. In other words not just the history of Tibet but the history of the region, the history of the relations between the States as emerging from different perspectives.

JURGEN AXER: The International Red Cross is already working in Tibet. What we could do is to send a letter to the IRC to ask what they are doing to get information.

CLAUDIA JOHNSTON: I consulted Mr. Mustafa, head of the Trusteeship Council. He said that the way to get something on the agenda is the necessity of having an administrative authority and I don't know about the process of the resolution. Someone would take the responsibility would be able to put it on the agenda.

What is important is that China's occupation as to how their presently established situation is illegal has not been documented in legal context. This document is necessary for lobbying at UN.

VAN PRAAG: That is kind of research and writing can be used in the UN.

The Decolonisation Committee has a particular task for territories on the list. Under the agenda like militarization of non-self-governing territories there is a possibility, for example, to try to sneak Tibet in but probably you will be stopped by the Chair but nevertheless you have made the point.

With the Trusteeship Council the issue is really the merit in starting a process of looking at a possible revision of the role of the Trusteeship Council and there is a window of opportunity there which would at some point benefit the situation of Tibet. That is a long term type of scheme which would have some impact. Maybe that is something which few people from here could do some work on, in terms of actually bringing that on the agenda of the Trusteeship Council. That at this point is impossible for the reason that you need administrative power. First it has to be decided as to how another country like India is going to be the administrative power of Tibet. Politically that is very unlikely if that would happen in the next decade or so. In terms of first trying to transform the Trusteeship Council into something and then trying to use it, that is something which surely be put on the list of things to look at whether it is realistic for us to undertake.

In other international organisations like the International Parliamentary Union, for example, something valuable could be done. The International Conferences of Parliamentarians have taken that up, maybe it is the kind of the work for them to do than for this forum. It would be worthwhile to know what they are doing, and see if any research and writing being done by this group can be used to try to get action by the International Parliamentary Union at some point. Any connection which they may have can also be effectively used.

As a result of the points raised about the perception of different states based on their history and experience, it may be worthwhile in terms of the research and preparation to try to identify with at least a number of countries, things that they identify with that relate to Tibet. In other words those who have a colonial history how you can relate that to the situation of Tibet. Those who have had occupation sometimes in their history, how you can relate that situation with Tibet. Those that have had some

similarities in their history or their status or spiritual inclination or anything else in the history. In Ireland you talk about colonialism and the Irish understands what you are talking about. The same exercise may be made, if you can talk to the Greeks, their response is that they understand population transfer because of northern Turkey being flooded with Turks and that is issue that they identify with. It may be useful to workout what buttons to push in different governments, that may be a useful exercise in terms of afterwards trying to influence government positions.

B.C. NIRMAL: We are in great hurry in formulating recommendations that we take so many legal issues for granted. Resolutions passed by many world Parliaments and bodies on the similar lines can provide a basis on which we are also going to make our resolution. Any statement which we make must reflect what we feel about the legitimacy of the Government of the People's Republic of China and about the legitimacy of the Tibetan Government in Exile. We should spell out clearly what is the test of legitimacy against which we are examining these issues.

For example, Chinese argument regarding Tibet is built on historical arguments. China never claims any title to Tibet on the ground of 1951 agreement, or illegal annexation. China has been a victim of unequal treaties and has always taken a view that a passage of time does not convert an illegal title into a legal title. China has made this contention in the context of Hong Kong. If we say that annexation is illegal under terms of international law then we should also say that Tibetan people have a right to restoration of their sovereignty. This is an international consequence. Then we should spell out that, since we feel that conquest is illegal, subsequent annexation is illegal, the passage of time has not changed the legal position of Tibet. It means, Tibetans have right to restoration of their sovereignty as Mr. Vijay Kranti has pointed out. We should spell out the consequences.

I agree with Mr. Engineer, that let us forget about the past, and discuss the legitimacy of the People's Republic of China's Government in terms of people's rights, human rights, minority rights, right to development, right to peace, and right to sovereignty over natural resources. If people's rights are not being respected and are being violated on massive scale we should say that it is illegitimate and no exploitation of natural resources of Tibet should be allowed except with the consent of the Tibetan people. We can make recommendation that international IBRD, non-governmental organisations, other bodies should persuade, pressurise multinational corporations not to exploit natural resources of the Tibetan people. This is my submission.

I feel we should clearly spell out the consequences. We should say that Tibetan Government in Exile is a legitimate Government and is a true representative of the Tibetan people. The United Nations should grant recognition to the Tibetan Government and accorded an international status. They should be declared as the national liberation movement of Tibetan people, as was done in many case of

national liberation movements. Tibetans were not permitted to meet the United Nations' Special Rapporteur for Religious Discrimination when he visited China. We already have a UN Declaration on Religious Discrimination which has appointed a Special Rapporteur. A Non-Governmental Organisation may persuade the UN Special Rapporteur to take up the issue of installation of Panchen Lama by the PRC because it is a flagrant violation of religious freedom and cultural autonomy of the Tibetan people. Since this is a very recent event, Tibetans can make a big news at the international level if they point out this fact in detail.

As regards population transfer, United Nations Sub-commission on Prevention of Racial Discrimination has already appointed a Special Rapporteur to discuss the issue. A suggestion can also be made that Sub-commission should take up the issue of religious freedom in Tibet. An international conference on religious freedom and tolerance should also be convened as early as possible.

It may not be possible for the United Nations to pass a resolution in the context of Tibet, but it may be possible for the United Nations to take some action in the area of population transfer which is very relevant to Tibetan's case. So we should make general suggestions also, not specifically in the context of Tibet. Rather we should say, that the United Nations should explore the human right implications of population transfer and implications of development projects, as some general suggestions. It will cover everything.

C. MAPRAYIL: I have listed out the action plan. One of the suggestion is to get enough members of the UN General Assembly to support a resolution on self-determination for Tibetans in view of their human rights violations by the Peoples' Republic of China. The London 1993 Conference resolution we could endorse, it says: "Request the Government of the Peoples' Republic of China at the earliest possible time to extend an invitation to the International Committee of the Red Cross for the purpose of inspecting places in which Tibetan persons are held under detention". We should also publish a book or a booklet on Tibet's right to sovereignty, the human rights perspective.

B.C. NIRMAL: International law relating to self-determination is itself in the process of evolution and development. All member-States are facing one or another kind of self-determination movement. We can request the General Assembly to seek advisory opinion on the right of self-determination. Alternatively we can request the United Nations General Assembly to clarify the principle of self-determination in the form of a declaration. The Friendly Relation Resolution, 1970 discusses this aspect. Since then much water has flown under the bridge, many new developments have taken place, and the overall response of international community towards the issue is just like a dam but a stop to the river. When Soviet Union disintegrated, they waited

for some time and then granted recognition. The same approach was adopted in the case of former Yugoslavia.

The international community should take firm steps for containing further damage to Tibet's environment. The International Bank for Reconstruction and Development and other multilateral and bilateral financial institutions should be urged not to fund projects supporting transfer of population. It should exercise its pressure on the Chinese authority to stop nuclear testing and weapons production, uranium mining and dumping of hazardous waste. An International Monitoring Authority should be set up to determine ways to restore Tibet's ecological balance and to protect its bio-diversity.

The United Nations Sustainable Development Commission should consider the problem of deforestation having regard to evidence of the special problem of deforestation in Tibet. When we say that the Tibetans have a right to self-determination, we should also make a recommendation to the effect that the international community should provide all possible moral and material support to the Tibetan people in accordance with the principles of the UN Charter and the Friendly Relation Declaration.

VAN PRAAG: This is the most comprehensive contribution and should be acceptable except, perhaps, the reference to the General Assembly. Seeing the condition of the various members and their problems that they are facing, what is happening in Bosnia as an outcome of this principle, you will find it very difficult to get a definitive response from the General Assembly.

If we go on to the ICJ, one of the great difficulties is the vicious circle, the catch-22 is that we have to be a State in order to bring a case to the international court of justice. There are two ways of doing it. One is a government can bring a case against another government or an advisory opinion can be asked by a specific organ of the United Nations that are authorised to do so.

It would be worthwhile researching whether there is a government, be it Central American Government or another that would have a political will to undertake a legal action against China on the basis of violation of treaty with regard to Tibet. That is one option, politically realistic or not anyway it is legally an option.

The other suggestion that was made was to try to go to the General Assembly. These the political difficulty at the moment are too big. There may be some other organ of the UN like Ecosoc where it is also possible, but Ecosoc has all the members of the General Assembly. So the political configuration is the same.

Presently there is a dispute within the Ecosoc in a Committee on NGOs. Certain NGOs have been accorded the consultative status with Ecosoc. In the United Nations they are not allowed to participate in the Commission of Human Rights and a number of other bodies. That status is reviewed periodically. The NGO has to submit a report to the committee and the committee looks at it and can criticise it and can review their status. What is happening now is two NGOs in the process of review

had been criticised by China for raising the question of Tibet's status specifically because they have used the term occupation. China says these NGOs are violating the principles of the Charter of the UN and therefore should lose their Ecosoc status, and have required all these NGOs that they first publicly state to the committee that they recognise Tibet to be a part of China before they can maintain their status.

It is an unprecedented act although China has done the similar thing already two years ago. But in terms of making it clear it is unprecedented. The question is really whether this could be used effectively. Whether we could lobby some of the governments in that Commission, for example, to deflate the issue by saying that this committee should ask for an advisory opinion in the International Court of Justice as to whether this NGO has breached the duty given the Ecosoc status. Ask that question and through that at least get the issue of whether China is authorised under the Charter to claim that an NGO has to recognise or not recognise. It may be that the whole issue can be brought up there at least as a part of the proceedings. It may anyway shock to Chinese if it goes to International Court of Justice. That is a possible. The suggestion that I am making is that we may want an opportunity to go to the court.

J.M. MUKHI: I heard a suggestion that one could go to the International Court of Justice through a third country on the Genocide Convention. Would there be a possibility of raising the status of Tibet as a side issue in that application and if so, would it not be worth finding a third country?

VAN PRAAG: That relates to the first point of having another country do it under the treaty, the genocide treaty is perhaps a possibility.

CLAUDIA JOHNSTON: That suggestion was given by a Professor of Law at Columbia and was also an ICJ Judge. His recommendation was that because China is a party to the Genocide Convention and if one could identify a willing state who is also a party to the genocide convention who would act on behalf of Tibet and bring the case to the ICJ. He felt that this would be the best approach because it was the human rights issue and that there would be no dissent among the international community.

VAN PRAAG: Let us put that as a concrete sub-category of trying to find treaties. This is one of them which could be invoked by a third state against China.

Specific suggestions made concerning the use of federal courts in the United States to do a claim against China, against the business there or there may be other possibilities of raising a claim against China. That is not limited to US courts but the US courts, because of the long-arm of the US jurisdiction tends to be able to talk about anything that happens anywhere in the world. Other courts in other countries can also do it and certainly on a national basis.

Would it be possible in a US court besides doing a case against corporation that is doing business in Tibet, for example, to start a case against the United States Administration for undertaking actions or making statements that are contrary to its obligations under a particular treaty, that refers to Tibet. For example, the obligation to not recognise any legal occupation or something like that, against the resolution of the Congress as a part of an argument. I don't know it is possible under the US law.

CLAUDIA JOHNSTON: I am not aware whether it is possible either. I think that is a very strong position and probably be on the list. The pressure should be applied because it is definitely an issue of what is that international incumbency to react and how long that everyone has not come to their obligation. The idea of starting with the companies, those who are availing themselves with the fruits of aggression is to try to break that economic enthusiasm of going into Tibet.

VAN PRAAG: A lawyer in France is extremely active in trying to bring cases of this kind in French and other courts. One of the things that we are going to look at is to do research and to start some activity in a court in the US or elsewhere that includes the raising of the status of Tibet. We are looking for a court opinion or a decision which includes statement on the status of Tibet which we can then use elsewhere.

CLAUDIA JOHNSTON: This federal court action could be possible by using the example that the Chinese gained access to the territory by the slaughter of people. If we try to get into the fact about the status of Tibet of whether it was an independent state, whether the boundaries were violated and all that, there is a possibility and a jeopardy that the federal court could refer to the executive position on the status of Tibet and in that case there would not be a case. It was important therefore to take the position, that the only way that the territory was gained was by gross violation.

VAN PRAAG: You are probably right about referring to the executive but maybe in terms of aggression or something like that it could be used. Because certainly the United States at that time made a very clear statement that it was an aggression. So it would be difficult for them now to say well it was not aggression. They might say it was part of China in some way. But those are the details of how we should work it out when we get back to it. But then we can say we are going to look for ways in courts to get some statements on the status of Tibet or try to bring it to court.

VAN PRAAG: What are the possibilities of doing similar type of actions in India? For example, when conference is planned and obstacles are put in the way by the Indian Government. I don't suggest that the Tibetan Government should start an action because their relations with the Indian Government should be very good. Would it

be possible for an individual who goes to the conferences or organisers a conference to go to the court to ask the government to issue a visa or something like this. In certain countries you can do that.

J.M. MUKHI: Yes, of course you can do it here. We have got a charter of fundamental rights. We have got freedom of association, freedom of expression, etc. The court would certainly look into it. We still have a hang over from the British past and the court does ask for the Foreign Office certificate as it would do in England on the status of a particular country in regard to recognition. It may be an uphill task, but something could come out of it, of course. I think it would be worthwhile looking at it. I think the only lawyer who can do it is Mr. P.N. Lekhi.

L.L. MEHROTRA: If the court in the US has to be moved, we should consider ourselves better placed because there is a large Tibetan community in USA and it can be specifically given the task of identifying a trade party that would agree to raise this question, and they would probably be in touch with such trade partners who are doing trade with Tibet in particular, or who had been adversely affected by orders and may feel interested in doing this.

B.C. NIRMAL: While action at national court level may be a suitable strategy to draw the attention of the world public opinion to the situation in Tibet, we should also examine one hurdle that is judicial immunity of foreign states. They cannot be impleaded before national courts, without their consent, at least in the Indian law. We can, perhaps, find out the possibilities of a public interest litigation. Refugee problem is creating problem for us and the Government of India should take up the matter with China or should seek something. We can make the Government responsible for its inaction in the matter. I don't know whether this strategy will be successful or not. but let us examine its possibility.

VAN PRAAG: First, we have said that we might prepare papers, briefs that could be used in efforts by governments. We may ask Tibet's Support Group and the meeting of Parliamentarians to be held this year and ask them to engage each government in a real discussion on the issue on the basis of the papers that have been prepared, and ask the governments for answer to very clear questions relating to the status, occupation, and aggression, etc., and ask Parliamentarians to put those questions in parliaments. Whenever the response is not satisfactory, to go back with them with a new argument, re-engage them over a period until every issue is responded to satisfactorily. They be forced to talk about their view on what is aggression and what is not aggression, what is colonialism and what is not colonialism and how does that apply to Tibet. We should figure out a way to have official dialogue with governments in different places, ask the questions in such a

way that there is the best chance of getting the answers and that might be a way of using these documents that we prepare, rather than to sending it to them hoping that they are going to be influenced by them.

CLAUDIA JOHNSTON: That is an excellent recommendation and the first opportunity for that is at Denmark which is planning to hold discussions on the situation in Tibet. Maybe that would be the first opportunity.

VAN PRAAG: The Parliament of Denmark, is holding a hearing on Tibet. There are three committees, and they are holding a hearing.

We had a very good hearing in May in Bonn at the German Parliament. It was the best hearing that I had attended, because it was so directed, and attention was paid to the issue of the status of Tibet as opposed to only human rights because of the level of the participation of all parties and the seriousness with which the entire day it was conducted by the Parliament.

If this type of hearing is conducted seriously, then we could have the materials, ready and have perhaps some eminent lawyers from here participate in this it would be a fantastic opportunity.

TASHI WANGDI: We had this opportunity about 12 years ago in Germany. The Green Party put a set of questions to the German Government and sought answers and then followed on that. That was a good exercise because they were able to draw the German Government on certain basic issues.

We may also ask accountability of Governments who have been making statements on the status of Tibet particularly in the sixties. During the UN General Assembly discussions, Governments sponsored the resolutions, and representatives spoke on the status of Tibet and used terms like invasion and occupation. Governments may have changed but whether we can still hold these Governments accountable for the statements they made.

For example, in India Pandit Nehru made a famous statement in Parliament in 1953 that 'whatever may be the legal, constitutional argument, but ultimately the wishes of the Tibetan people must prevail.' It is a very clear statement by Pandit Nehru. When the Chinese forces started marching into Tibet the External Affairs Ministry submitted a note to the Chinese Government and said, "now that you have started invasion, any agreement between the Chinese Government and the Tibetan authorities can be construed to have been signed under duress." That was before the Seventeen-point Agreement. Government of India agreed that this Seventeen-point Agreement was signed under duress, in that note from the Foreign Ministry. The Irish Foreign Minister in the UN Assembly said that Tibet was more independent than many of the then members of the United Nations, proving the fact that Tibet was independent.

I think, some of the statements can be used against the Governments and they can be told that ever since they took a stand on Tibet nothing has changed. On the basic position it is very difficult for the Governments to go back. Most governments like Canada have developed relations directly with China. Although they have some reservations on issues like Tibet once they have established diplomatic relations with Peoples' Republic of China, they now accept everything which is part of the Peoples' Republic of China. Still there is a very strong ground to raise this issue with the national Governments.

L.L. MEHROTRA: On this question of creating a climate in India and what we can do *vis-à-vis* the Indian Government, there are two very important Parliamentary Committees. One is the Consultative Committee on Foreign Affairs, the other is the Consultative Committee on Defence Affairs. A little approach to Members of Parliament would yield very good results. Tibet has to come up as an issue for consideration before these Committees. This would help to create a national climate because the proceedings of these Committees are not secret, they are always publicised and members want to be known that they have expressed their interest in Tibet, they have discussed the status of Tibet and the implications of a new situation in Tibet, and express their fears about China's control over Tibet and its implication about security situation in India. They would discuss this in the context of India's on-going negotiations with the Chinese on the border issue but nevertheless the Tibetan cause would get reflected. And I would strongly recommend that some steps are taken in that behalf.

NARESH MATHUR: Article 99 of the Chinese Constitution is the only provision that I am aware of any redressal if certain promises that are made have not been secured. That seems to be the only provision under which you can approach the Chinese court. I was also considering whether the Tibetans inside Tibet could use the judicial system inside China to challenge certain laws on the ground of discrimination and on the grant of Article 99.

TASHI WANGDI: I think that is an area which can be looked at if we can advise the people of their rights. Mrs. Bhattacharjee mentioned about the civil rights issue, and it is something certainly people inside Tibet could use and they should use. But then the question comes whether they have the possibility of using it in reality. I think is a different issue altogether.

At the present moment, as far as we know, any issue taken to the court has not succeeded. Tibetans demonstrated against the price rise which is a basic thing but that was treated as a riot and crushed ruthlessly. Then parents demonstrated for better facilities for their children who are taken away to China for primary school education, and they had heard that their children were very badly treated. Their

grievance has not be redressed and they continue to be treated very badly. Even in the case of Panchen Lama in 1987, in one of his addresses to the Committee of the Chinese National Congress, he listed grievances including the use of Tibetan language in Tibet, both for the giving instruction in the school and also for official purposes. So far even such rights have not been agreed to. Achieving anything at this point is a difficult but of course people have constitutional right and they should use it.

C. MAPRAYIL: There are news about human rights violations in Tibet. We could recommend that the Chinese PRC should accept a neutral team or a fact finding team to investigate and ascertain the extent to which these violations are taking place.

One suggestion was there that we should try to do whatever we can to influence, educate and create public awareness within China.

MIRA BHATTACHARJEA: As delegations come from China we could meet them. We could explore ideas about how negotiations between the leaders of the Dalai Lama's group and the Chinese Government can be resumed.

L.L. MEHROTRA: We can suggest that they negotiate but that is not in our hands, nor can we do anything to really get it across. Is there anything we can do as far as getting across the Chinese people are concerned, meeting delegation is one point. I think that could be furthered.

VIJAY KRANTI: I believe that like in other societies the Chinese houses are now very fast getting equipped with television and these televisions are also picking up international programmes beamed from Hong Kong. Now is it possible, for example, to have a programme of just even five minutes a week, *Voice of Tibet* kind of thing where the Tibetan point of view can be broadcast, what they are going to, what they have gone through, what kind of solutions they are looking forward to and educate the people all around what their viewpoint is.

I am a journalist and I am working for *Radio Voice of America* from New Delhi for the Hindi and Tibetan service. Already there are efforts going on in this direction. *Radio Voice of America* you will find in a way represents the western mind, the direction in which it is thinking, in which it is going. It also reflects what are their objectives, ten years ahead. Earlier the same machinery has been helping, promoting, financing, executing radio networks like *Radio for Europe*. There are suggestions that the US Congress is going to cut down budget of *Voice of America* on many other services but the budget is being increased disproportionately for the Tibetan service and the Chinese service. The Chinese section of *Radio Voice of America* is expanding so fast. Many radio stations are coming up with the finances of many western, European Governments plus America aimed exclusively at Tibet

and China. So I think, there are people who are thinking in the same direction already.

MIRA BHATTACHARJEA: I think there is a distinction must be made between propaganda and information, between state interests and humanitarian interests in the matter of the rights of the Tibetan people. These are two distinct and separate categories of information.

VIJAY KRANTI: I wanted to communicate that Chinese audience and Tibetan audience are already on the agenda of different Governments and those forces who sincerely believe that they are promoting democracy. It is left to interpretation, what is propaganda and what is information.

O.P. TANDON: Since we are discussing action plan, I would like to share with you what we have been doing in the Tibetan Parliamentary and Policy Research Centre on this aspect. There was a proposal particularly from the India Desk under the Department of Information, International Relations that we could organise the pro-democratic Chinese movement spread all over the world particularly in the western hemisphere. Then we did some exercise of collecting all the information about the various agencies, and people and thought of bringing out a newsletter in Chinese language containing information about Tibet and sending it to them. We also propose to organise Chinese students who are studying in universities in other parts of the world to make them aware of the Tibetan perspective. A few who are more enlightened and democratic in their outlook could perhaps understand the nonchalant subtleties of the situation which perhaps the education in the Communist China would not allow. This exercise has already been started. We have already a list of over 350 on our mailing list where these bulletins are being despatched. Bangtai Xu may discuss this issue with his colleagues in the United States or elsewhere and let us know to what we are trying to do will be useful or if we can further strengthen this particular exercise.

BANGTAI XU: The common people of China know very little about Tibet. There is no problem with two lakh of Chinese students studying abroad about the self-determination issue, China has got 1.2 billion population. It is the one-fifth of the humanity. We have to do a lot of work to make this population or a considerable part of the population to understand the issue of self-determination.

We support the establishment of the *Free Asian Radio Overseas* and this will be helpful to the Chinese democratic cause. If the Dalai Lama visits China, may be a low profile one, the impact on the Chinese people would be immense. I just give you one example, China has now opened up Taiwanese veterans to visit China. The people of China were not always thinking that Taiwan people are miserable. After the opening up of China to Taiwanese visitors and also the opening up of

economic front, the Chinese common people now know what the real position of Taiwan is. I know many Tibetan friends who have received very high education. If these people could visit Tibet and talk to people that is good.

Mr. Tandon mentioned about this Tibetan Newsletters in Chinese for which the response is quite good. If a Chinese version of this workshop is prepared our journal can carry this and it will enthuse the Chinese readership.

Students in San Francisco have established a radio called Voice of China. We broadcast to China, Taiwan, and Moscow. We can have some Tibetan programmes in that radio.

NAWANG LAHMO: How can the Chinese and Tibetans staying overseas come closer? Besides these international and other high level meetings we should organise more workshop like these and invite more Chinese as well as more Tibetan people. It will give us a chance to come together. In free time, we can understand each other much better. At the same time, there will be more free and frank talks and we can educate each other. I attended some conferences and I met Chinese women and some of them were shocked to hear about the real situation in Tibet. They thanked us because they were under the impression that Tibetans were savages and thankless people, that China was spending money in Tibet for its progress and development and still Tibetans were thankless and revolting against the Chinese. When we meet them we educate them. They even promised us to spread this information about the real situation in Tibet to their fellow Chinese students, friends and their parents. I think, it will be very fruitful if we could organise workshops and invite people from both sides and hold free and frank discussions.

In women's forum also in certain seminars I have told the Chinese delegation that we don't regard them as our enemies because we are human beings. It is the Government and persons in power who are mistreating. I always tell them that it is better to come together as women and try to figure out the problems we are facing and how we could solve them.

VAN PRAAG: The Tibetan Government should consider signing treaties and applying for membership to a number of international organisations. Applications to sign the treaties, such as the Geneva Convention maybe a political decision but would depend on the procedures for each separate treaty. But it would be an act of statehood, an act of the Government and it would lend support to the fact that the Tibetan Government considers itself to be a Government. Some of these treaties, such as, some portions of the Geneva Convention can, be signed even by the liberation movements.

Lawyers here might look into what the advantages and disadvantages are of applying for membership to a number of organisations like WHO or the ILO or others. It is going to be extremely difficult, but there may be governmental or non-

governmental bodies like the IUCM and Inter Parliamentary Union and the World Parliamentarians' Forum where the Tibetan Parliament or members of the Tibetan Parliament could apply for membership, either in the full capacity or in observer capacity.

These activities will reaffirm Tibetan's view of themselves as being a State and a Government.

B.C. NIRMAL: My suggestion is that we should also examine the status of Tibetan refugees in the world. It is worthwhile study. Most of the Tibetan refugees are living here. They have certain rights as refugees. What are those rights and how far they are enjoying those rights in countries where they are living.

R.P. DHOKALIA : As a result of the disturbance of the status of Tibet, Tibetans face the problem of their being reduced to refugees. There is an international status of refugees under the Refugee Convention.

Secondly, they have become stateless persons. An individual has rights and obligations as citizens of a nation. They have lost their nationhood and have become stateless persons. They are victims of human rights violations. Human Rights Committee is very powerful which have done a lot of good work accepting petitions from individuals and groups. I am not aware to what extent the victims of a genocide or human rights violations who have escaped from Tibet have approached Human Rights Committee to highlight the kind of violations taking place currently. Human Right Committee publishes all petitions and asks questions to the Government concerned. They have to reply. A process starts.

As stateless persons, as victims of human right violations and genocide, etc., what has been done in international fora, United Nations and Human Rights Committee, etc.

Tibetan refugees in India are not formally supported under any law. They are provided with financial grants and other facilities unofficially to escape any protests from China. Do Tibetans in India have international status? Are they receiving grant and support as refugees from International Refugee Organisations?

TASHI WANGDI: Tibetans in India enjoy the stateless status by their choice. Under certain legal provisions we can apply for Indian citizenship, others who are in other countries can also apply for citizenship. That is an individual right. As a group, we have taken the decision that we will continue to be refugees with stateless status in legal terms, but in national terms we are Tibetans, citizens of Tibet. On the basis of that status we are entitled to residential permits from the Indian authorities under a legal provision and are issued identity certificate. The official position of the Government of India is that Tibetans have been granted political asylum, that is as

per the statement made by Jawaharlal Nehru in Parliament in 1959. With the granting of political asylum Government of India has also taken certain obligations under international law, to give us facilities for education and facilities for the preservation of Tibetan culture. This is done openly through Government official channels.

As far as the United Nations recognition for Tibetans is concerned, till 1972 the United Nations Commission for Refugees operated an office in India dealing mainly with the Tibetan refugees and had a number of programmes for their rehabilitation and welfare. In 1972 following, the Peoples' Republic of China replacing Republican China as member of the United Nations, the office of the UNCR was closed and we that under the UNCR Charter recognition of refugees is for a certain fixed period of 20 years, and for the Tibetans who came in 1959 that period had expired. UNCR continues to be involved with the fresh refugees from Tibet and maintains an office in Kathmandu. which is functioning and they feel that it is within their responsibility to help these people. This is the present situation.

JURGEN AXER: The other minorities, distinct from the Tibetans it would be interesting to examine the minority question in China itself.

VIJAY KRANTI: Yes, it has wider implication, because there are 56 nationalities in China and it is the Hans who are ruling over others. In that way we are not going to fight only for Tibet's cause but for many others who deserve at least as good a dealing. It is a good idea.

VAN PRAAG: We should be a little careful. If we are going to compare Tibetans with the other 55 that are left, you are changing the entire nature of the argument that you are making because the others were not independent states. Mongolia is a different situation. But the other 50 odd are very different, when we are talking purely on legal issues. Human rights, minority issue is a different matter. Tibet is not a question of minority only.

We all know the resolutions passed in the General Assembly in the 1960s. The political situation then was very different from today. Many suggestions have made for passing resolutions, for holding conferences at the UN, all this sort of things. Having worked at the UN now for a long time on the Tibetan issue, I think at this time those possibilities are unrealistic. The political configuration is such that at the General Assembly you will not get a majority of votes for any resolution on Tibet, not even on human rights, let alone on anything that has to do with self-determination or political status.

We even had a very hard time passing anything in the Commission on Human Rights. Over there a lot of work has been done by the Tibetans, very effective lobbying and with the support of a number of countries every year resolution is being

tabled and every year it has been voted down and every year we get closer to the vote. In fact last year it was one vote short of passage of resolution. It was a resolution on China in which there was a paragraph on Tibet because that was the only way to get the consensus of enough countries.

Ground work has already been done, and anything that we can do to support that work in terms of lobbying with different governments in terms of working through Parliaments, in terms of writing articles in the press, I think, is of major importance and we should try to do that and see what we can do. Let us focus on that what we can do to support that effort before we talk about doing things in the General Assembly which are unlikely to succeed, let us try to concentrate on the Commission on Human Rights where we have a chance.

Secondly, let us see if there are other bodies in the UN, other procedures within the UN which we can use. The human rights procedures has been used very extensively. Special working groups are all being addressed regularly by the Tibetan human right desk and by a number of NGOs that work with them. So, that process has been used. The question if there any other specific avenues in the UN that could be used.

NARESH MATHUR: The International Commission of Jurists, we were given to understand by Judge Kirby, was rewriting something on Tibet. I just want to know how far it has proceeded and what has happened with that.

VAN PRAAG: It is still in the making. The process is still going. I hope within a year the end product will be done. So far it is not done yet. Any inputs would be welcome. Certainly inputs from lawyers because they are very particular about lawyers being involved and not any other. But I am sure that if you have inputs, you should get in touch with the local ICJ at Geneva HQs. and see what it can contribute. I don't know much about the report. It is going to go over some of the same areas that went over before, but also with a very strong emphasis on human rights.

C. MAPRAYIL: We could use the Convention on Elimination of All Forms of Racial Discrimination.

VAN PRAAG: That has been used by the Tibetans. As you know the procedure is that countries have to submit reports regularly every two years. China does that and then the members of the Commission question that Government. What Tibetans have been doing is supplying the members of the Commission with information and sample questions which they can ask. Basically effect of it is to embarrass China, can't go any further than that, but it does have an effect.

Tibetans have been doing the same with the Convention on the Rights of the Child, and, the Convention Against Torture to which China is also a signatory; all

of those have the same procedure. China has not signed the ICCPR and the International Convention on Cultural, Social and Economic Rights. If they had, then that procedure could also have been followed. Under those treaties, as I understand, there is no provision to go to the International Court of Justice if the treaty has been violated. As far as I know the only procedure that exists is the review procedure, but there may be a possibility of also using International Court of Justice for breach of treaty by another government. I am not sure.

L.L. MEHROTRA: Whereas it is right that we emphasise what we can do in the UN Commission on Human Rights or the International Court of Justice, there should be no difficulty in our adopting a recommendation that the UN General Assembly should also review the situation. We may not be able to bring it to the UN floor within a year or two, but the recommendation should consistently be made and circulated so that over a period of time it will have effect.

Secondly, instead of just emphasising the aspect of human rights in any UN resolution, could we also make this kind of a recommendation which is made in many UN resolutions on many international situations, that the two sides should enter into meaningful negotiations as quickly as possible, that His Holiness suggestion should elicit a response from the Chinese. In this particular sense, if we could do something.

There is a Sustainable Development Commission. It is not necessary for a member-State to go to the Sustainable UN Commission with a request because request that can be made by an NGO because there are issues like harm to the environment and the lack of development on sustainable basis, which is substantially a colonial situation. So I think that also could be done.

Then, I would like to examine whether the International Committee of the Red Cross could take some initiative to inspect places where Tibetans have suffered, where there are instances of atrocities, where the Chinese literature itself from 1989 onwards would say people have been punished for their secessionist activities. Some names have come out. In such cases could the International Red Cross take initiative which is worthy of examination and something that we could ask for from this floor.

It may be too much to recommend at this stage that the UN should call a special conference on Tibet. There are UN conferences on disarmament and UN conferences on development that we have seen recently and on women's rights and on social issues. Tibet may not immediately come into that category. Will it be possible for us to recommend a high profile international conference not sponsored by UN, but by a multiplicity of NGOs on the plight of the people of Tibet. This would cover everything. We need not say that we are seeking independence or anything, but on the plight which would involve everything. Ultimately it would be a part of the churning process.

VAN PRAAG: In Sustainable Development Commission, some initiatives have been taken, but not very sustained, yet, that is going to increase. The situation there is the same as in the Commission on Human Rights. NGOs can speak and NGOs can give written documents in an observer capacity. In other words they have no right to take part in the decision-making process. They can try to persuade delegations to do something, try to develop enough support for resolution to be passed. At the same time, Tibetan delegations have been very conscious of the fact that the initiative to do something at the Commission of the Human Rights or anywhere else in the UN, the main objective of it is not so much to have a resolution passed, but to educate the international community, the governments sitting there on the situation, to use that as a very important forum. Your suggestion on the Sustainable Development Commission is well taken.

In terms of NGOs organising a conference, there should be no problem in that in theory.

L.L. MEHROTRA: So many countries have become independent and therefore the Special Committee on Decolonisation has very little work to do. Can we give it some work?

VAN PRAAG: I think it is a very important, perhaps the project should be to look into how that can be used. The problem with the Decolonisation Committee is that it works with the list of territories that on the list of that special committee. To get a new country or territory on that list requires the same process as any other political activity, namely a resolution at the General Assembly which is more difficult than human rights resolution. In terms of getting it on the list chances at this moment are small. In terms of actually using the Decolonisation Committee for another purpose, namely as one more forum to educate and to make China nervous that is a possibility and we should be looking into that. That is something which we put on our list as one of the things to do certainly as early as possible.

R.P. DHOKALIA: This Centre should undertake a study of Tibetan refugees in India. Refugee is an international status entailing rights and obligations. It is not charity on the part of host state or on the part of the United Nations. Refugees have under international law rights and obligations, and the country which has provided refuge is also under obligation to comply with this Refugee Convention. The Centre should take up the study of Tibetan refugees and their protection under international law.

VAN PRAAG: India has not signed the agreement, and under that Convention it has no obligation, but under general customary international law there is an obligation.

MIRA BHATTACHARJEA: I have not looked at it from the international law point of view but the information that I have come across is that in 1972 after joining the United Nations China took two steps which have had consequences which we are dealing with. One was to write to the UN to say that Tibetans abroad should not be treated as refugees because they are *bona fide* citizens of China and China welcomes them back. It is on the basis of that approach to the United Nations that the office of the High Commissioner for Refugees was closed down here and funding for refugees was stopped. I don't know the international legal aspects of this.

The second, which is also germane to what we are talking about is, the letter that went to the Decolonising Committee which said that when the lease was up for both Hong Kong and Macao these territories would return to China, i.e. they would not go through the intermediary stage of having independence as an option but they would be returned to China. These steps were taken as pre-emptive measures, in a sense long before the political process began.

TASHI WANGDI: The Chinese Government may have written to the United Nations for that, but the United Nations High Commission for Refugees continues to function for Tibetan refugees in Nepal. They have also reopened the office in Delhi and they have continued to take that responsibility. Chinese had pressurised even the Nepalese Government, saying that they are Chinese citizens and were free to return to China, but they had decided on their own to remain outside, so it is wrong on the part of the Nepalese Government to consider these people as refugees in Nepal. Fortunately in spite of many problems the Nepalese Government refused to be cowed down under this pressure and Tibetans even in Nepal are considered by the Nepalese Government as refugee residents in Nepal.

J.M. MUKHI : Citizenship and refugee-status are two different things. You can be a citizen of a country and still be a refugee from that country. China has always claimed people abroad as its citizens. So from the Chinese point of view perhaps, they would claim the Tibetans to be Chinese nationals. I suggest, if it is appropriate for the Government in Exile and for the Assembly, to have some sort of definition of 'Tibetan' which might be useful later on. Even during British times, many of the princely states had their own sub-nationality laws. You had rules in Baroda, for example, as to who was considered to be a subject of the Baroda state. It should be possible to have some definition of status as a Tibetan, whether in India or in Tibet or elsewhere. A Tibetan would never say that he is a stateless person. For Tibetan he is a Tibetan national, Tibetan citizen, wherever he may be in Tibet or in India or in Germany or anywhere else. It is another thing if a country describes him as a stateless person. I am glad that India describes Tibetans as stateless persons and not as citizens of China.

S. RINPOCHE: Thank you for your suggestion. We have already defined what is a Tibetan citizen in our Charter for the Tibetans in Exile, and we also made certain provisions of how to maintain that citizenship of Tibet. We also have provisions defining obligations and responsibilities of a Tibetan citizen. There is a provision that if for any circumstances any Tibetan refugee has to accept the citizenship of other country, he does not have to give up his Tibetan citizenship if he fulfils certain responsibilities as prescribed in the Chapter XIII of the Charter. We are fortunate enough that the Government of India, all the 37 years, in the two documents, Residential Certificate(RC) and Residential Permit(RP), against the column of citizen, we fill 'Tibetan.' Once, a few years back in certain areas of West Bengal they objected and tried to change it as Chinese citizen. They argued that there is no Tibetan citizenship as such. There was a little bit unpleasant situation but finally that was withdrawn. In all the out-going documents we carry the identity certificate in lieu of the national passport, which mentions our citizenship as Tibetans. I had a very peculiar experience at the Tokyo Airport where I had to stop overnight and the airport authorities searched all the directory and they said that there is no such country as Tibet which can carry a citizenship. He asked me to fill the form Chinese citizenship. I refused. We had a long discussion and more than three hours I had to remain in that office. Finally he agreed to fill that form 'Tibetan' from me and then underneath he put his own remarks.

R.P. DHOKALIA: I want to draw your attention to three functions of a Government : welfare, protection of people and representation. When we say that Tibetan Government of Dalai Lama is legitimate, then we should recommend that the government should be allowed to perform the functions of welfare of the people, their sustained economic development and protection of human rights. They are entitled to approach international fora for the protection of their people and for redressal of any remedy. As Nirmal pointed out they should be recognised as a liberation movement and allowed representation in various international bodies.

VAN PRAAG : I think the idea of discussing about the 'Future of Tibet' is not to have a detailed discussion on what the future status of Tibet because that is for the Tibetan Parliament to engage and endorse.

O.P. TANDON: By way of information, I would like to inform that TPPRC is already bringing out a booklet on *Tibet — A Future Vision*.

S. RINPOCHE: His Holiness has already given his guidelines and that is the basis for future Tibet.

WAN PRAAG: There are a number of documents that have come out both by Tibetan Government, and by other sources. One gets constantly different versions of what His Holiness says at the press conferences. Press loves to use the word 'autonomy' when His Holiness doesn't, and that confuses everybody every time. So I think, it is useful for everybody who is involved in this to have some of the statement that are authoritative on the issue.

Another possible idea is to provide information to Tibetan Government, for their preparations for negotiations, if they have to take place. It might be useful to review different statutes negotiated by other political entities in similar type of situations, not only the Baltic State and how they arrived at the status, they have got now — the recognition of their independence, but there are others that have reached different type of agreements. Since His Holiness and the Tibetan Government have been saying that independence is not necessarily the only outcome, it is therefore necessary to know what other outcomes may be positive, what are the disadvantages, what are the legal consequences of them? So perhaps a compilation of some of the relevant case studies could be undertaken.

NARESH MATHUR: Two suggestions for that. One is the model of protracted negotiation between Switzerland and Italy done in great detail down to who would take care of the municipal lighting. It is something which went on, it was formalised and acceptable to all the states and then the United Nations formalised it, accepted it. That would be one. And the other one I can think of is Catalonia.

ASGAR ALI ENGINEER: We have problem of Kashmir. Farooq Abdullah is demanding autonomy as it prevailed in 1953, the agreement between Sheikh Abdullah and Pandit Jawaharlal Nehru. That also could be one of the models.

TAN CHUNG: The world is changing very fast and we are entering into the 21st century, we are already in the post cold war era. Some of the old concepts of confrontation are disappearing. Even in China, the leadership that controls from Beijing or from the provinces may not think on the same lines as those in the 1950s, 1960s or 1970s. I visited China recently and talked to many people about the problem of Tibet. There are also Tibetan scholars who have come to India. A Tibetan scholar from the Chinese Academy of Social Sciences visited India last year talked to people and arranged visa for some to visit Tibet.

The first thing is to have a dialogue, in my personal opinion. I think the whole world is towards dialogue. Confrontation has given way to dialogue. There is some hope. If we close that option then whatever you had talked is not possible. If this option is open I would probably devote my efforts, for the rest of my life. But I can not do much of the things that you have suggested so far. Dialogue is something

which is the eastern culture and eastern art. Chinese are very good at that. They are pastmasters of talking and negotiating. The general impression is that the Chinese are rigid. On the other side, they were keen to talk. They want to talk to the people of Taiwan. They are talking at different levels.

Last year I visited Centre for Tibetology in Beijing and met the Deputy Director. They said that they wanted to come to India. I said, you are welcome. Many of them are think-tank. There is no harm in talking to them. We should talk with sincerity and seriously. We have to create that atmosphere.

VAN PRAAG: I think that is a focus on the future, the promotion of dialogue and maybe there should be some thinking of the ways in which this group can help to create conditions that will result in dialogue or in negotiation.

S. RINPOCHE: Tibetans are facing the situation where their identity is in danger. It is a question of survival. Tibet may disappear altogether if all doors and windows to dialogues are closed. International community for political reasons is quiet. China is mighty. China does not believe in nonviolence. It looks at nonviolence with contempt. It looks on religion with contempt, not only as opium but as poison. In this situation, what is the future for Tibetans? Will the community and neighbour-States continue to look disinterested at the large-scale human rights violations, genocide, and demographic aggression? What should be done in this situation? If there is no political dialogue and all doors are closed, no legal remedy is available for the victims. What is the alternative?

TAN CHUNG: I agree totally with Prof. Rinpoche what he said except his pessimism that Tibet might disappear. Tibet will never disappear. Today's China, today's Chinese army, today's Chinese leaders and politicians are not those of the 1950s and 1970s. We should keep this in mind. I have full confidence that Tibet is not disappearing, their identity is always there and no force in the world can wipe that out.

ASGHAR ALI ENGINEER: I don't think, any nationality can be wiped out let alone a nation. All we need is continuous propaganda. If we can keep that alive the issue remains alive. I don't think future is very dismal. It may be a very long-term struggle, but it cannot be so dismal that they will never succeed. I don't think. Anyone who struggles and works, has to work with hope. Despairing will paralyse our energy and we will not be able to do anything. So all those who struggle, whatever the cause, have to keep their hope alive and we should also keep our hope alive on this issue too.

The Dalai lama is respected world-wide. This is the only struggle of all nationalities and ethnic groups which has remained absolutely nonviolent. We must bow our heads to compliment Dalai lama and his followers. It is no easy task. Even those who believe in nonviolence become violent in extreme situations but this movement

has remained absolutely nonviolent and they have really done what Gandhi had done at one time. So I am quite hopeful rather than being desperate.

B.C. NIRMAL: I have discussed in my paper the modes of implementation of the right to self-determination. I have examined the concept of autonomy and various autonomy models and I have said that it is unfortunate that the Chinese Government has not made any positive response to the Strasbourg proposal made by His Holiness the Dalai Lama because that can form the basis for negotiations on the subject.

You may also consider the suitability of the Vatican City model which was created under the treaties of 1929 signed between Italy and the Holy Pope for Tibet. As a sovereign State, the Vatican State sends and receives diplomatic envoys and concludes international agreements. It participates in international activity, has its own political organisation and autonomous government and its own legislation. If a political arrangement is evolved in Tibet in which equality, democracy and human rights are secured to the Tibetan people within the bounds of the People's Republic of China on the model of the Vatican City from comprising certain areas near the Potala Palace it will serve the needs and aspirations of the Tibetans who are struggling all these years for the restoration of freedom and independence. That is a suggestion which you can consider.

The last part of the paper is on the future of Tibet. As a foregoing analysis reveals the Tibetan people have the right to self-determination, internal and external. Neither the passage of time since the Chinese invasion and subsequent occupation of Tibet, nor the military control exercised by the Chinese authorities in Tibet has in any way affected the legitimacy of the Tibetan case for self-determination. In general the validity of the claim to self-determination is examined in the light of other counter-veiling principles of international law such as the principles of territorial integrity of State, *uti posseditis*, colonial enclave and historical claims, and peace and stability but in the particular case of Tibet these principles have no application. The right to self-determination gives rise to a duty on the part of the international community. The least it demands from third-states is to refrain from doing anything which impedes the exercise of this right. The duty of non-recognition of territory acquired by force is enshrined in international law in the 1970 Declaration on Friendly Relations, and 1974 UN General Assembly Resolution on Aggression. Failure on the part of the State to observe this obligation constitutes breach of a duty to respect the right to self-determination of the concerned people.

Though international law is on the side of the Tibetans, due to its inherent weakness, it cannot provide immediate justice to them. In the absence of central law-making and enforcing agencies it is not unusual that violations of its rulers sometimes go unabated.

History is replete with instances of death and rebirth of many states. If the Baltic States can regain their freedom even after the lapse of nearly 50 years, why can't

Tibetans regain their independence in future. The opposition of the United Nations to the extension of the right to self-determination outside the context of decolonisation for fear of 'Bangladeshisation', that is, dismemberment of a member-State by their own state by minorities could have prevented the United Nations from extending full support to the cause of self-determination of Tibetans. But recent development with regard to the principles of self-determination in the post-decolonisation and the post cold war era, in which the international community has adopted relatively more tolerant attitude towards self-determination in the non-colonial context, demand a reasonable and realistic approach and attitude on the part of the United Nations towards these countries. If big powers can send multinational force to liberate Kuwait from Iraq occupation army there is no justification for not taking similar action to liberate Tibet from 46 years of illegal occupation by China. Mercifully Tibet does not fight a war for the liberation of Tibet. All they ask for themselves is to lend moral and material support in their efforts for self-determination in accordance with their obligations under international law.

In his address to a university, HH the Dalai Lama asked the international community to apply the same standards to China which it has invoked in response to colonialism and human right abuses in other parts of the world. Is it an unreasonable expectation from the international community as a whole and the western European power and the United States? The international community does not need to be reminded that the principles of non-use of force, non-aggression, human rights and self-determination are of universal application and legally binding on all members of the United Nations and human suffering resulting from conquest and human rights violation are the same for all human beings, be they in Kuwait, South Africa, Palestine, Namibia, Baltic States or Tibet. Distress over uses in Tibet is as legitimate as international concern over human rights violation in Soviet Union and South Africa. These matters are not the internal affairs of any country, but fundamental concerns of human beings.

S.D. MUNI: My suggestion would be, if possible, independence and self-determination should be both incorporated as part of one strategy because simultaneously there may be independence demanded in the other situations of self-determination.

It is true that a strategy for independence would be extremely fruitful if there is a prospect of Chinese disintegration. Mere change in old leadership will make no change in a position. If China changes to democracy it will be a different situation all together, but I am not so sure. If there is a prospect of China disintegrating, like the Soviet Union, then this strategy of independence would be extremely handy to carry on with the thesis of sovereignty and whatever other propositions there are. I have my very serious doubts, it is a question of judgement, but I don't think disintegration is round the corner. In fact I see greater consolidation of the Chinese

power and influence no matter under what political order. Even under those circumstances it would be better to have a two pronged strategy.

The tri-lateral equation between India, China and the US on this Tibetan issue is very important. That can be handled at the government level and at the level of people. At the level of governments India needs to have a workable, friendly, co-operative relationship with China, and the reverse is equally true which often people do not emphasise. I have a feeling that the Chinese in the coming ten years would be far more active on their south-eastern coastal area, South-East Asia and South China Sea, and that is one additional reason they would like their west-northern flank to be stable and assured. The west-northern flank is the most volatile for them — Tibet and Sinkiang. They are worried about Sinkiang in terms of the Islamic resurgence, and they are worried about Tibet is case of the old problem that is there. On Sinkiang they exchanged protest notes with Pakistan, one of their best friends, on the Jamaati-Islami inciting fundamentalists. That has developed a new area of understanding between India and China because both India and China are interested in seeing this area as a stable area. That can on the one hand prove to be a hindering factor for Tibet, that there are limits imposed by it, it can also prove to be a facilitating factor for them because Indian government can discuss with the Chinese that something has to be done to stabilise and therefore they should concede to some of the demands of the Tibetans in a friendly way rather than India becoming a source of disturbance in Tibet which the Chinese are scared. India has other reasons also not to press this point beyond a limit. The Sikkim issue is still hanging fire and they would very much like a *quid proquo* on Sikkim. There is a problem of the Chinese helping Pakistan's and most of India's neighbours — arming not in the illegal sense but selling arms in legal sense to Sri Lanka and Bangladesh. This has been an irritant between the two countries for a long time.

The issues between India and China are far more complex to be concentrated only on Tibet but Tibet can become an area where India can persuade China to grant some sort of an accommodation to Tibet in order to see that the whole area gets stabilised. This was perhaps one of the components during Tehran talks when China lent its weight in favour of Indian position on Kashmir Human Rights Resolution which was on the table in Geneva.

At the governmental level we are forgetting other countries which are very vital. We have forgotten Europe, both Scandinavian and non-Scandinavian, and Japan. They may not be the US in terms of trade. The United States can also government to government influence because of trade and other dependence on the other side, it can work. That is one area where the governments can be persuaded, to exercise a benign persuasion, not pressure, on the Chinese to show accommodation vis-à-vis legitimate demands on human rights, democracy, religious freedom, freedom of expression — to whatever extent it is possible on the Chinese. This is where self-determination is useful.

At the peoples level you can still talk of independence. You can have series of conferences not only in India but including India. Normally you hold a conference in Europe and concentrate on the Europeans, or in India and you concentrate on the Indians. That's not good. You should widen the experts and see that a larger body of thinking from various parts of the world gather together and that will give a greater legitimacy or voice to that.

In countries like America E-mails, FAX's do a wonderful job. I mean you just put in 200 people on alert and they would continuously feed the E-mail messages to the whole of the world, not only to keep the issue alive but actually in order to build pressure. They write to their Congressmen and senators; and direct letters to the state department. This is how you build up the way at the peoples' levels popularly known these days as the 'track two diplomacy' which is extremely vital. It may snowball in a different way but that can really be done. The Japanese may not like to offend the Chinese, for certain reasons, at the State to State level but there are people with various interests, including the Chinese scuttled all over East Asia, and the US who have a different perspective on some of these issues.

I have very loosely laid out few things. It is very difficult to tie up the loose corners into one coherent package of action plan but these are the components which I might add.

J.M. MUKHI: You made it very clear that we have to build a ground swell of world opinion and that must be on the basis of violation of rights of independent people in Tibet, we would like to know basis of the negotiations. But if world opinion is to be built as a ground swell which will have an ultimate effect then it must be put as strongly as possible. There is no need to dilute it or to make it palatable.

S.D. MUNI: No I didn't say that. I argued for the judicious use of both the concepts. I am not saying dilute or strengthen that. I am saying for different audiences you may need a different face.

J.M. MUKHI: You need not demarcate between independence and self-determination you are to use both the expressions together.

S.D. MUNI: These may be the two levels of diplomacy knowing not what becomes your end game. You can use independence to make self-determination an end game and you can also use self-determination to make independence as an end game. Since there are so many uncertain factors you can't say this is how it is going to occur and therefore I must do like that.

S.C. KASHYAP: What he may be saying is that in a certain situation, our demand may be for independence but in another situation we may prefer to accept self-

determination. In any case, so far as negotiations, strategy and struggle are concerned, the two may not be viewed as mutually exclusive.

What is our action plan? Where should we go from here and what should we do? In this we should keep our eye not on today or tomorrow but try to look ahead and plan for the future, for possibilities and probabilities that may come about as a result of emerging international political and strategic scenario.

We have talked about self-determination in the context of international law. The concept of self-determination in international law is of recent origin. If we take the term self-determination in a literal sense then it is the foundational norm for all democratic thinking. The very basis of democratic polity is the right of each individual and each group collectively to decide for itself. Prof. Dhokalia's consensus formulation began by talking of democratic entitlement or the legitimacy on the basis of consent which is a matter of global recognition today. If we proceed from that I would say that in China itself it would not be too long that this global phenomena would have an impact and they would disintegrate. After the disintegration of the Soviet Union, China is the last autocracy and the last totalitarian state. There are others but they are not major and they would crumble like a house of cards. I foresee that in not a very distant future the international forces, the domestic forces, and ideological forces will compel the Chinese system to breakdown and disintegrate whether it is because of the leadership dying out or it is because of internal or international forces.

That change will have a fundamental effect on what we are doing today. In fact, it is already beginning to have some impact. Although the Chinese are not prepared to democratise the central government they have already started talking of local democratic autonomies, at local levels. If they start with local democracies very soon they would have to yield even at the central level, and what they have started as socialist market economy and liberalisation in that name will very soon bring real market economy, consumerism, capitalism, and globalisation in China. That is the future scene I see in China. I believe that in foreseeable future, in its own interests, the United States would also be in favour of independent Tibet. It may not express it today and it may not be announced in the official government policy but their policy makers already envisage an independent Tibet. So that is a factor we should not forget. The real solution for the Tibetan problem may not come today or tomorrow, but that does not mean that we give up. If we know that the solution would come only when we have favourable international, political and strategic scenario that would give us greater power of sustenance, and that would activate our efforts and that would keep the issue alive which is very necessary. We should have workshops like this, build public and world opinion.

Shri Bhattacharjee said that situations in China and Kashmir could not be compared as these were very different. But is it not possible to envisage a Kashmir like situation in Tibet vis-à-vis China? What Pakistan or foreign powers are doing in

with Kashmir through proxy war, if the same thing happened in Tibet how would Chinese not feel uncomfortable?

AJIT BHATTACHARJEA: It had happened in the past. The US had supported major insurrection for several years but eventually American pulled out because Nixon made a deal.

S.C. KASHYAP: I do not rule out the possibility that what is happening in Kashmir and Afghanistan today might happen in Tibet tomorrow.

S.D. MUNI: With a difference that the Indians have not adopted to the demographic transformation policy which Chinese have adopted.

S.C. KASHYAP: I am not saying the Indians would do it.

S.D. MUNI: No that is where may be today because in Tibet you have the Han Chinese 7.5 million, they will just butcher, they are so many.

S.C. KASHYAP: The demographic aggression is a different issue. In a guerrilla warfare or in the use of terrorist tactics, it is not an outright war. The Tibetan terrain would perhaps be more suitable for guerrilla warfare then even Kashmir.

A mention has been made about the Strasbourg proposal and the two series of negotiations which were held. I don't think we need to either highlight or go by them. There is no contradiction in talking about independence and keeping open the door for negotiations. We can not say if you talk of independence then Chinese will not talk to us. We can make out a case for independence and we need not condemn China, we can make it very conciliatory, we can appeal to China, we can build public opinion. We can place our case positively and make them see reason without condemning them for anything they may have been doing. I would think that we would be on stronger ground by asserting the right to either independence or self-determination leading to independence, and the door could be kept open for negotiation.

The conference may recommend setting up of an independent project for an in-depth research in this area. Also, a documentation centre may be built up at the centre for systematic information management.

VIJAY KRANTI: We have heard a concept of a Vatican kind of system for Tibet. This is degradation of approach. Everything started from total freedom. In Strasbourg it was diluted to a kind of autonomy and later on we have found that there were not many takers within the Tibetan community and HH diplomatically withdrew the entire statement in a very diplomatic manner saying that he would go back to his people

because Chinese have not responded on this offer. But this concept of a Vatican kind of system is going to lead the whole issue into a very new direction which I think is not a very healthy direction. We are going to convert this whole issue into a religious issue. Tibet is not a religious issue. Tibet is a political issue, it is an issue concerning colonisation. Religion has practically no place in this whole issue. It is the Chinese Communist policy which interpreted the Tibetan resistance as religious and feudal. We all know what they did with religion concerning different nationalities inside so called China. They did not do anything new to Tibet. By talking about the Vatican we are going to convert the whole issue into a very small issue which to a big population of the world is an irrelevant issue of religious freedom. Because more than half of the world does not believe in religious freedom. Constitutionally it does not believe.

Secondly, on political ground, once we talk of Vaticanisation of this issue, I don't think we are going to return to highway towards freedom. Even if it is a strategy to gain some access to Chinese or to make Chinese come on the table, we will be landing into a blind alley which is not going to take us very far. This is one danger which I feel. This is a comment.

Michael put it very elaborately on how Chinese look at Tibetan history. We have discussed these things quite in detail. I would request my learned senior friends here to go into a little more detail on another aspect of this problem and that is the history of China. What we see today, what is China today? Is it the China which ever ruled Tibet or was it China when it ruled over Tibet? Does it give today's regime, the Chinese regime, the legitimacy of even acquiring that heritage. Do they qualify for it? This is an issue which will come and define the status of Tibet once again in a new light.

VAN PRAAG: The question addressed by Rinpoche is the question of the 'zone of peace and *Ahimsa*'. We may express support for the creation of a zone of *ahimsa* with all the consequences thereof. This is a consequence of self-determination..

L.L. MEHROTRA: It is more than obvious to me that we are not looking at two things but three.

1. Legitimacy of the Tibetan Government in Exile, and more than that of the Dalai Lama as the fountain-head of authority for the Tibetans, a position which the Chinese have been constantly assailing.
2. The illegitimacy of the Chinese occupation of Tibet.
3. The practical and remedial steps that we ought to take.

I will confine my arguments to the third. There is an ideal situation and a practical situation. Ideally, the moment we pass a resolution the Chinese should walk out of

Tibet and Tibet's sovereignty would be restored. We are nowhere close to that situation. In terms of practical steps I do not see anything more practical and more wise than what His Holiness the Dalai Lama, as the arch representative of his people and the sole authority of the people of Tibet, has himself suggested. We should start negotiations and not seek at this moment of time independence or sovereignty but be content with China remaining in power. Negotiations, should start. When I suggest negotiations, I am not side-tracking Tibetan claims, or side-tracking Tibet's authority but only reaffirming what his Holiness as the fountain-head of authority and as the sole representative of the people of Tibet has stated. I see the wisdom in it very clearly. As the first step or the final step, that only history will tell us as to how far Tibet will go in achieving ultimately a sovereign and independent status. China says that it is not ready to listen unless the other party explicitly agrees to talk within the framework of China's integrity and sovereign authority.

You say we want negotiations. How do you bring the two parties together. Either we say that the sovereignty of Tibet and the independence of Tibet is not negotiable and the Chinese should agree to talk to us, on that basis, otherwise we will fight for freedom through our struggle and world support. That is one proposition. But if we were to conform to what we have seen on the ground in terms of Tibet's legitimate position, of His Holiness being the authority of what Tibetans want by consent, they can talk to the Chinese within a framework that may be acceptable to the Chinese. Then negotiations should start with that end in view. There is a great deal of merit in that.

We are talking of liberation. The most recent effective liberation movement on the international scene has been that of the Palestine Liberation Organisation (PLO).

I had a good fortune of associating myself with some very critical discussions on this subject when they started Yugoslavia when I was Ambassador there. I had a very private conversation with Yassar Arafat. I am a devotee of non-violence even more than a devotee of His Holiness the Dalai Lama. I suggested to Yassar Arafat in the language of Mahatma Gandhi, and told him, "you have fought and sacrificed lives and your movement is seen as a bloody movement, and you are not getting support from the many countries of the world because of its bloody character. Why do not you turn to nonviolence" I am not the architect of this spark of non-violence in his heart. I do not believe Yassar Arafat even today as a devotee of non-violence, but the formula worked. He shunned violence at a conference that followed of the representatives of all the Palestinian groups and proposed a change of posture and got the whole world negotiated a direct settlement with the leaders of Israel. I am talking of how international diplomacy functions. As a first step he accepted an autonomous status for Gaza and the West Bank and we have seen the success of the operation. That is, unless you are practical, you would not achieve the objective.

If we pass a resolution and Chinese walk out of Tibet all of us will celebrate it. But I don't foresee that happening. Why? Because China is a power. There is no

doubt that the mightiest of powers have been up-turned. The sun never set in the British empire but Gandhiji lit a spark of freedom and the whole world has become free one after the other. Between 1950 and now, in 45 years there has not been even a convert in the United Nations upholding the right of Tibet to full sovereignty as against the right of Tibet to full autonomy. Now it is bodies like us who have to create a sensation and say that Tibet has to be independent. That is a different operation. But having seen that you cannot easily even find a third party that would sponsor a resolution at the United Nations, and even ask the United Nations to ask China to negotiate, in a situation like this, fully keeping in view the rights of the people of Tibet, the illegitimacy of Tibet's occupation by China, the legitimacy of the authority of Dalai Lama as the fountain head of authority — spiritual and temporal in Tibet, as a practical step, we should face the Chinese with their own statements and raise the conscience of the world and say the Chinese have gone back on their word and they should be asked to give to Tibet what they promised and start negotiations. The negotiations will develop a momentum of its own, and it may lead to the demand for full independence. Otherwise, some day or the other, Chinese will be faced with an armed struggle and they will be faced with its consequence. But that is another part of history. Are we working for that at the moment? Then for some years, our efficacy will be closed. But if you are working for a efficacious system, then I suggest that we bring in this aspect of it in the third regime that we are supposed to propose.

VAN PRAAG: I am a little confused about what Mr. Mehrotra said. If we suggest negotiations, should that be constructed that there is no disagreement among anybody here what the framework of those negotiations should be, namely, some form of autonomy or something short of independence? If that is no, we are treading on a very vicious grounds. The example of Arafat, is a good one, but Arafat did not go into the negotiations with pre-conditions saying you can only negotiate for autonomy. The result of the negotiations was that they accepted something less than what PLO movement originally wanted. That may be a possible outcome of negotiations between His Holiness and the Tibetan Government with the Chinese Government, but it is for them to decide what concessions they wish to make. The Tibetan position has been, and is the position of the resolutions of different Governments and the resolutions that we now propose that, negotiations should be without pre-conditions, I think we would be making a mistake, even if the Tibetans were wanted but the rest of the world does not want it, we feel that the pre-condition is that they agree to talk about something less than independence. So our position should be to endorse the position that there be negotiations without any pre-conditions. There is no need for us to restate or for us to limit the parameters of the Tibet negotiations. We have to be careful in the wording.

R.P. DHOKALIA: Mr. Mehrotra's, position is our reiteration of the stand taken by the Dalai Lama and the fulfilment of the commitment made by People's Republic of China itself.

J.M. MUKHI: The framework for negotiation is very clear and we don't have to spell that. We are not making a recommendation to His Holiness nor are we making an appeal to the Chinese. What we are doing is merely to express our support for the decision already taken by His Holiness that he would talk, but should not ask His Holiness to go ahead and negotiate, ask for independence or settle for less, that should not be our attitude at all.

JURGEN AXER: NGOs have different objectives than governments. The NGO's are not clear what is actually the position of the Tibetan Government in Exile and what the NGOs could do for it. In this regard the international Tibetan Support Groups meeting in June so that NGOs have at least one political line, a common understanding of that what the Tibetan Government in Exile is going to do. They have a human rights cause, environmental cause, all kinds of reasons to work in a way, but usually not very compatible with what the Tibetan Government in exile wants to do.

The second point I think we should focus is on NGOs which are not oriented on the Tibetan cause. We need to get more and more NGOs oriented specially Indian NGO's on working in different fields but don't know what is going on actually with the Tibetans even here in India. We should approach the NGOs in Asia. The western NGOs they are quite involved and active but so far there are not very many NGOs in Asia who have interest in the Tibetan cause. We should focus on getting more South Asian NGOs involved in the cause and the rights of the Tibetans.

NAWANG LAHMO: During these last three years we had quite good relationships with different NGOs and it is very encouraging, especially from other countries that they are coming forward. In all fields whenever we have programmes we inform them and they also come forward with certain suggestions. We are in close touch with the Indian NGOs, especially from the women side, and we are working together and we hope that some new NGOs in India would be motivated. So we have not decided yet what we will do, Tibetan women were quite successful in Beijing Conference and it is only due to our network with the NGOs with the other countries.

PEMA LHUNDUP: (Tibetan Youth Convenor) Our association is in touch with NGOs around the world since long. There are some activities which cannot be undertaken by the Tibetan Government and those activities we undertake.

WAN PRAAG: The experience of Tibetan Women's Association is really a learning one for Tibetans. You need an NGO, specialised NGO in order to reach out other NGOs. Only Tibetan Government reaches out to other NGOs. There is an ambiguous relationship. Many NGOs don't like governments and the more the Tibetans behave like a government, the less likely they are to have a kind of partnership with them. There is very often that problem.

I understand that a new NGOs on the Human Rights for the Tibetans is being set up. It has been on the cards for a long time. If they can follow the example of the TWA, the women's organisation, it could have the same impact of having really world-wide contacts. I know that Department of Environmental Affairs of the Tibetan Government has been having very good contacts of NGOs.

URGEN AXER: The recommendations of this Conference may not have any binding but let us reiterate the position so that the group can undertake plans for action.

There is nothing new as far as the question of legitimacy of the Tibet is concerned but the organisers' would like to know what more could be done to put pressure on the Chinese to come to the negotiating table. As far as I understood from Prof. Rinpoche the question of dialogue has been going on for years and may go on for another 20 years. The Dalai Lama may not be there and only Panchen Lama may be there. We have to look for new ways, and work out new plans of action to address different power groups to get the Chinese people come forward for negotiations. The idea of involving NGOs was from this perspective. What comes out of this exercise no one can predict and that is not essential. The media policy of the Tibetan Government in Exile to me is not very clear. There are so many publications; so many issues, everything is there but I never have a clear picture. Panchen Lama, for example, issue was not clear. Who is issuing what, statement? I am suffering since quite some years about it.

TASHI WANGDI: I think it is basically the free Press. There have been mushrooming of publications. That is part of the democracy and freedom of expression. In so far as the official publications are concerned, the Department of Information issues from time to time press statements, press releases which are official. Then we have the official publication of *Tibet Bulletin* in English and Hindi. We also bring out monthly publication in Arabic and Chinese language. This includes current issues, updating information about human rights situation, and certain policy statements which are to be made. So far as the official position is concerned we express it through these publications of Department of Information. Tibetan Youth Congress have their own magazine and publications in different languages. They express their own points of view which is not necessarily the government point of view. Then there is the Tibetan Youth Congress regional organisations. All regional organisations, bring out their own publications. Tibetan Women's Association also publishes on their own. Then

we have the various institutional establishments. So when people are inundated with material from all these sources they get confused. But it is easy to distinguish between the official publications which carry the Department of Information source line and others. From time to time the Assembly of Tibetan People's Deputies meet and they issue their statements and proceedings.

We regularly issue a number of Press statements on happenings in Tibet from Dharamsala. It is our duty to inform the international community. The media generally have reservations against the government statements and there is some reluctance on the part of newspapers to pick it up. An idea was suggested about a year back that there should be a non-governmental Tibetan News Service Agency which was started, but could not continue.

We have in London the Tibetan Information Network (TIN), that was established about eight years ago and over the years it has gained credibility. Now it has become one of the news sources which is quoted by all the international media and the governments and other UN agencies. They use that. It has been recognised as reliable source of information on Tibet. Something like that can be established in India that would be a major achievement in terms of dissemination of information through the newspapers.

AJIT BHATTACHARJEA: We did start Tibet File about a year ago as an effort to have a non-official projection of news about Tibet. The problem was, of course there was not very much news and we wanted to check this. The first thing to do was to establish credibility. If you are regarded as a propaganda machine, then nobody is going to use your stuff. So, that meant checking, rechecking, making sure of your sources and it took a long time actually and the resources also were not adequate and gradually faded out it and we did not really get too far. I think this sort of a thing has to go on for several years before you really get across as TIN has managed very well from London.

Also the news from Tibet is not very high. In India it is limited for a variety of reasons, it is also regarded with some suspicion because of previous history where some news about Tibet was used as propaganda by the United States. For a variety of reasons it is very difficult to put out news items which are credible, acceptable and used. But it can be done as TIN has showed. It takes time, it takes resources, it requires very good sources. Dharamsala has limitations as far as the credible news which did not really come. I think the effort was well worthwhile and something like it is required if you want to spread in this part of the world.

At the moment there are limited chances. The main impact is through television today. Because of Government policy Doordarshan India really does not use much of news that is critical of the Chinese in respect of Tibet. So, perhaps we could negotiate with some of the other networks that have now started. That perhaps might be a good idea. We could make TV films concerning Tibet, about the refugees if

they could be or distributed to through the non-governmental networks, it might have good an effect.

ASGHAR ALI ENGINEER: What we are doing for communal harmony movement, we make cassettes and through NGOs and other networks it can be shown on video. That is also very useful and its own impact. So, even if any cable network does not show, it can be circulated during a conference or workshop on the condition of refugee and what is happening in Tibet, etc.

VAN PRAAG: I have a suggestion in terms of some of the official statements Dharamshala produces. The credibility the official information organisation has, even though they sight the Tibetan government as having come officially from the government that it is credible and it is reliable and somehow we take responsibility for that. But it depends on the nature of the statement and the nature of the type of information whether we think it is something we can spread to the press or not. We have the press service, the MPO, and we distribute information through the media. That is part one option until you have this service working with the maintenance of the official character of the press release, but through an agency that does have good relations with the press and where the suspicion may be a little bit lower. But that is one possibility that you may want to use.

CLAUDIA JOHNSTON: One of the major sources that works in collaboration with TIN in London is World Tibetan News and that is put on the INTERNET and is available on a daily basis. So I don't know how many have the opportunity to see this, but its are valuable. They are merely a group of editors who work out two weeks information, collect from different sources from all over anything that is published on Tibet, any information is forwarded to them and they amalgamate and make it available on a daily basis.

VAN PRAAG: Very often when something happens there is a need for some comment by authoritative persons and of course one first goes to the Tibetan Government, Parliament and others for comment or representatives of Dalai Lama Board. I think there may be an idea to get some persons involved in this type of forum for comments on issues that you are experts on, whether it is on religious freedom or whether it is on status questions on relations with India, anybody who is involved with press could have a pool of people. If you need a statement or you need a short article for an update piece you can call on them. That might be a way also of contributing to the Press campaigns.

JURGEN AXER: Business groups should be involved to pressurise, that is the powerful lobby who have interests. If we could influence them and they agree to do business

with the Chinese with specific condition that they oppose human rights violation.

R.P. DHOKALIA: We must urge the World Bank, multilateral, bilateral financial institutions not to fund any project in relation to transfer of population in Tibet.

T.N. CHATURVEDI: We should put it in more positive language that the restoration of the equilibrium as existed when the aggression took place.

L.L. MEHROTRA: We should seek a reversal of the process, and restoration of the *status quo ante* instead of doing and undoing. That is legal terminology.

R.P. DHOKALIA : I suggest the use of the phrase "Reversal of process and restoration of *status quo ante*."

PEMA LHUNDUP: Regarding the population transfer we have to discourage the development project being sponsored by UN and other non-governmental organisations because whenever a new project starts in Tibet, Chinese bring in thousands of Chinese from China into Tibet to work on that project. The United Nations sponsored world food programme in Tibet, for example, resulted to the influx of 1,30000 Chinese peasants from China. So these development projects which are being financed for the benefit of Tibetans are on the contrary facilitating the Chinese to bring in more Chinese into Tibet. These development projects must be discouraged.

R.P. DHOKALIA : We must urge the United Nations, World Bank, UN agencies and other multilateral, bilateral funding agencies, not to support projects which support population transfers.

TAN CHUNG: I have no objection to your strongly worded document. The main aim should be to address it to the Chinese people and they should not feel that this document is racist or something. I was wondering whether suggestions to business and other organisations to stop funding projects in Tibet should appear as if we are suggesting stopping projects in areas outside Tibet? Is it the idea that no projects be sanctioned so that China is weakened, but that would be resisted by the Chinese people.

AJIT BHATTACHARJEA: What was suggested was that in Tibet such projects be discouraged, not in China: projects which were leading to the transfer of Chinese or Han people into Tibet. Secondly, we should address the Chinese Government; we are not in any way condemning the Chinese people.

P. MORENO: It is not necessary to clarify that new project should be discouraged because they will be free to carry on any project they have with the existing population. By this position we are legitimising the present status. We should say that as there has been population transfers in violations of international law, they should not do any projects there, and those which are there should be withdrawn.

T.N. CHATURVEDI: The problem is that the Tibetan Parliament is not in power in Tibet. We are only urging. The effort to restore the equilibrium is one aspect of it. The other aspect of it is that the new projects in the name of development for improving the feudal economy is in fact detriment to the people and resulting in motivated migration has to be screened and looked into properly. That is why these projects have to stopped. That also fits in or relates to what Dr. Axer had earlier said about the business interest groups. There is a seeming contradiction, but there is no contradiction in our thinking or in our approach. The fortunate thing is this seeming condition arises from the fact that somebody else has the levers of power but we are urging the public opinion in the world and all those who matter.

J.M. MUKHI: I support Prof. Moreno. He has made a very valid point that if at all we are to stop these international agencies from supporting population transfer schemes, we must indicate what they have been doing so far. Perhaps it may be possible to find a sponsor government and haul up these international agencies in the International Court of Justice. Perhaps, this may be the thin end of the wedge we might get in this question of demographic aggression before International Court of Justice.

VAN PRAAG: In the statement we can also suggest that project that are already being funded by them they should withdraw the funds from it and stop them. In terms of the International Court of Justice, it is worth researching whether there are UN bodies that are funding projects or intending to fund projects which really can be demonstrated to encourage population transfer. If so, we could ask for an advice or opinion of the UN or another agency of the UN as to whether it is legal for them to do it or not. Again it is a political matter whether that agency will listen or not. But some of the UN agencies are easier to work because they are less political. For example, it could be the UNDP with whom we have good relations, it could decide whether they should take an advisory opinion on this or not. It is not entirely impossible.

The other thing is simply to lobby on this, which Tibetans have done very tactfully with the European Union. They have put a project on hold as a result of very intensive work. A hearing in Parliament on this issue will also be extremely helpful. There is a hearing in the US Congress on the issue of World Bank funding of Chinese project in Sichuan which they claim is being used for weapons manufacture. The US

Congress is now looking into whether that is a case or not. So these type of activities can highlight population transfer problems by having hearings in different places and by perhaps trying the International Court of Justice.

P. MORENO: We have to keep in mind whether Parliaments or Congresses are a part of the governments. Government is not just executive but also the legislative and the Judiciary. It will be good to see whether the Parliament and Congress are accountable to their own statements. If the US Congress, for example, has expressed the sympathetic position on Tibet, then they also hold the power to fund or not fund many organisations including USAID, the World Bank, etc. If they have said that there is something wrong with the Chinese presence in Tibet then they should do something about it. The US Congress has a power to fund or stop funds to USAID and other bodies. It would be good to take a case to the Congress, hold a hearing. Two weeks ago in a Congress there was a hearing in which we testified on the religious liberty issues. One case involved a Chinese employee of a US Corporation in China who had been arrested because of his religious activities and could not attend 2-4 days of work and the company fired him because he did not report to work. The Congress is going to call upon the company to give an answer for that situation because there was a violation of religious liberty issues and the Congress also is interested in all these issues of population and territorial transfer. It will be important to ask them to really follow up not just on declaration but actually withdraw financial resources from some companies that are doing business there, or even calling to question the presence of private corporations there that may be receiving federal funds and all kinds of support.

O.P. TANDON: The recommendations* have been accepted. These recommendations were drafted by the Drafting Committee headed by Michael van Walt van Praag and assisted by Dr B.C. Nirmal, Ms Claudia Johnston and myself.

MIRA SINHA BHATTACHARJEA¹: There are few who, in today's world, would deny that all peoples including the Tibetan people have a right to self-determination.

This right has nearly always in history been invoked in a political context where a dissatisfied collective or people demand the right to separate from the imperial state or the colonial ruler in order to govern themselves. In all instances the disaffection was political, the means employed (violent struggle, satyagraha or negotiation) were political, and goal - independence - was political. The most dramatic examples, of course, are those provided by the long historical process of decolonisation.

* See post, Part Seven

¹ Written statement submitted after the adoption of the recommendations

In the post war world this process led to the emergence of dozens of new states in Asia and Africa. Some emerged as the consequence of long decades of struggle on the part of the nationalists and of resistance on the part of the rulers. I can think of no instance in which this right was granted to a collective people as a consequence of arguments invoking international law. (The example of ex-colonial Mandated or Trust Territories under the League and the UN is not an appropriate parallel. It was the changing political equation that first removed these territories from imperial control). This does not mean that precedents etc. of international law should not be invoked if and when the situation so demands and if they are truly supportive of the political strategy employed.

Similarly, in my view, the case of the Tibetan peoples right to self determination is a political matter requiring a political solution. It does not belong (especially from the perspective of those who were once colonised to the historical process of decolonisation. It belongs to a different historical period, one that is more complex, in which minority/ethnic groups within states are disaffected with the centre. To explain, decolonisation meant the recovery of all territorial and sovereign rights that a collective could legitimately (in principle and in law) claim for itself. In some cases this process of state formation remained incomplete. Thus, India waited until 1961 (fourteen years after independence) to integrate the Portuguese ruled territory of Goa, regrettably by the use of force. For China, state formation is still an unfinished agenda in relation to Taiwan. With regard to Tibet however, the PLA move into Tibet in 1950, whether regarded as invasion or not, was part of this historical process whereby an ambiguous political relationship was decided by political-military means. The Seventeen point Agreement 1951, attempted to minimise the element of coercion and to provide maximum opportunity for non-military measures to stabilise that relationship for the future.

Unfortunately no country had recognised Tibet as being sovereign in 1949-50, although it may have possessed many of the attributes of sovereignty. In political practice Tibet was not recognised as independent. It had no diplomatic relation with any other country and was not even a member of the United Nations, founded in 1945 four years before the PRC came into being. That unique political opportunity for Tibet to emerge as an independent state was lost primarily by Britain the US and India, by not having the political courage and foresight to recognise Tibet. Since then it has been a part of China and has been so recognised by the world community.

However this same world community and Beijing as well, are well aware that the relationship is uneasy, that the Tibetans are a dissatisfied minority people, that this dissatisfaction led to the upheaval of 1959 and to the flight of the Dalai Lama to India. Yet neither the host country nor any other has recognised the Tibetan Government in-Exile, nor is prepared to confront China in order to uphold a universal principle or for the sake of the Tibetan people. This is the harsh reality of how states

and governments behave. It promises little hope for the future. Should the International Court of Justice decide that the Tibetan people have a right to independence, it is unlikely to be translated into policy by governments. The most it can achieve will be a public opinion that is hostile to China and sympathetic to the Tibetans.

In such a situation and even in the process of trying to establish this right, the possible reactions of China should be taken into account. In other words the power and policy of the PRC should be analysed to gauge the real possibilities that may be available. Both because the maintenance of Tibet as an integral part of China is part of the earlier historical process of state formation, and because any external support for Tibetan independence particularly by the powerful G-8 countries will be seen in Beijing as a threat to its territorial integrity and even to its economic and social development, China's reaction will in all probability, be severe. Already it has demonstrated how it will, react should Taiwan (not yet integrated with the mainland) become independent. Beijing fears regarding Tibet are now being expressed in the manner in which it threatens to deal with the 'splittist forces' that support the Dalai Lama and the call for independence. Thus what it regard as a threat will be met, even after the passing of Deng Xiaoping from the scene, with a power response. The worst sufferers in that likelihood will be the people residing within the TAR.

A strategy that finds possibilities with China's declared *policy*, however, will lead to different scenario. China's policy of internal autonomy for Tibet as refashioned after the disastrous and brutal Cultural Revolution promises many thing. These include equality before the law and all civil rights including the right to religion, of association, of freedom of speech, and so on. Rights of autonomous areas include the right to enact regulations specific to their local political, economic and cultural characteristics, and to the management of local revenues. Many of these rights have yet to be fully implemented. This is unfortunately true of all countries, developed and developing, which necessitates the growth of vibrant civil rights movements within each country. The possibilities in the realm of *policy* are immense and will have the support of such movements throughout China and in the outside world.

The Dalai Lama has often reiterated that he stands by the 5 Point Peace Plan which does not demand independence, and that he would like to resume negotiations with Beijing. On their part, the Chinese have stated at the highest official levels that all matters can be discussed *short of independence*. There would thus appear to be considerable meeting ground between the two sides. In the process Beijing has also hinted at what at present obstructs the negotiating process from being resumed. Dharmasala must be more informed about this than those on the outside, privy only to published statements. If the obstacles perceived by both sides can be overcome, negotiations - which are a political not a legal approach - may once again get underway.

In conclusion, I would like to stress two points. One, that this problem is not unique to the Tibetan people. Particularly after the collapse of the Soviet Union, the world has witnessed a growing demand by sub national groups for self-determination. In some cases, as in Yugoslavia, where this right has been interpreted as the right to nation and statehood, the process (and probably its legacy) has been that of brutality, bloodshed and hatred.

In India, a multi-ethnic country, we face similar problems. It is worth nothing that where an external power is involved as in Kashmir, the responses of the government are severely constrained by state and security considerations. In such situations when the demand for rights is interpreted as independence, it is seen as being instigated by the external state to destabilise ones own state. The tragic consequence is greater militancy and greater repression over a longer period of time. Every such instance has a demonstration effect on other movements for rights and self-determination.

The Tibet case also raises issues that are of concern to groups/collectives all over the globe i.e., the issue of collective rights; of the human rights of individuals; the right to protect cultural and religious traditions; to resources, to the environment and so on. When these concerns are addressed by a personality like the Dalai lama who is held in high respect universally, their resolution cannot remain specific to Tibet alone. They will whether intended or not come to form a precedent. The right to independence under which are subsumed all the other rights can only destabilise societies like India and China which for centuries have attempted to discover unity while honouring diversity.

The second point has to do with linking the present to a humane future. In todays world, problems should be resolved in a manner that will reduce the violence, intolerance and suspicion that exist in the interstate system and within societies. Violence and hatred are not part of Buddhism; and the message of the Dalai Lama is one of Love Brotherhood and the Middle Path. It would indeed be tragic if the Tibetan peoples desire for self-determination leads to unnecessary violence or to a legacy of mutual suspicion between Tibet and China, or to tension and perhaps confrontation between China and other states if Tibet becomes a pawn in the ongoing game of power politics. The Dalai lama who holds a very special position in today's world, is ideally suited to innovating a new inner meaning of self-determination and of the means for its implementation. For instance though this may seem impossibly idealistic, a non-violent movement led by him for the implementation of full civil and religious rights for the Tibetan people as promised in the Chinese constitution, may achieve much more. It may well encourage a process of peaceful democratisation within the whole of China that will reflect also our civilizational and cultural values which differ from those of the western world, and help usher in a more humane world.

PART SEVEN

RECOMMENDATIONS

1875-1876

1876-1877

RECOMMENDATIONS OF THE WORKSHOP ON "SELF-DETERMINATION OF THE TIBETAN PEOPLE"

23-26 FEBRUARY 1996, MANESAR (HARYANA)

1. The workshop participants studied the papers presented at the first workshop of October 26-27, 1994, and the proceedings of that meeting. They heard the presentation of a number of new papers and commentaries to the first workshop papers.
2. Workshop participants discussed at length three topics: (1) The status of Tibet (past and present) and of the Tibetan Government in Exile; (2) The issue of legitimacy of the Chinese authority's rule over Tibet and of the authority of His Holiness the Dalai Lama and his government; and (3) The collective human rights of the Tibetan people to self-determination.

General conclusions were reached on all these interrelated subjects. Recommendations and an action plan were agreed upon. It was emphasized that the conclusions, in particular as they related to self-determination, pertain only to the very specific situation of Tibet and should not be interpreted as general conclusions on the broader applicability of the principle.

3. Participants found that at the time of the military invasion of Tibet (1949-50), Tibet was an independent state, possessing all the attributes of statehood required under international law.

The invasion of Tibet constituted an act of aggression and an illegal seizure of territory, in violation of the Charter of the United Nations and the Pact of Paris.

Since the PRC imposed the terms of the so-called "17-Point Agreement for the Peaceful Liberation of Tibet" on the Tibetan government in 1951, through the use and threat of force in violation of international law (including the Vienna Convention on the Law of Treaties), this agreement was devoid of any validity *ab initio*. It could not, therefore, have acquired any validity. Later, in 1959, the repudiation of this agreement was a reaffirmation of this fact.

4. Since 1950, nothing has occurred to alter the legal status of Tibet by transferring legal title of sovereignty to China. This means that today Tibet is not a part of China, but remains a territory under illegal occupation. This imposes on other states an obligation not to engage in acts which imply recognition of China's annexation of Tibet.
5. The criteria for the legitimacy of states and their governments are the performance by the government of three fundamental functions: (1) The protection of the people, (2) The promotion of their social, economic and cultural welfare, (3) The representation of their interest externally. In the case of Tibet, the promotion of the Tibetan people's spiritual welfare must also be recognised as a particularly important criterion.

China has failed to perform the functions of a state under these criteria in Tibet. By China's violent aggression and occupation of Tibet; it's persistent gross violations of the human rights of the Tibetans; it's repression of religious freedom; and it's attempts to destroy the national identity of the Tibetan people; and it's misrepresentation of the Tibetan peoples situation and aspirations internationally, China lacks legal, moral, or political legitimacy to govern Tibet.

There has been no act of democratic consent by the Tibetan people which could serve as a legitimization of Chinese rule.

On the other hand, His Holiness the Dalai Lama, as Head of State and Spiritual Leader of Tibet and the Tibetan people and his government do possess the legitimacy to govern and represent the Tibetan people. The Dalai Lama and his government, now in exile, derive this legitimacy from the 15th century instalment of the Ganden Podrang government of Tibet, whose continuity has since been unbroken. Moreover, it is evident that the Tibetan people regard His Holiness the Dalai Lama as their legitimate government. Therefore, His Holiness and the Tibetan Government in Exile must be recognized and treated as the legitimate representatives of the Tibetan people and given full opportunity to exercise the responsibilities of a legitimate government, to the extent that this is possible in exile.

China's detention of the young Panchen Lama who was recognised by His Holiness the Dalai Lama in accordance with age old established religious tradition, and their appointment of a different person to be the Panchen Lama, is a serious violation of the spiritual authority of the Dalai Lama and of the spiritual rights and freedoms which Tibetans have always enjoyed.

6. China's unilateral change of borders following its illegal seizure of Tibetan territory, its exploitation of Tibet's natural resources, its practice of population transfer, its systematic violation of human rights, destruction of Tibetan culture and identity, all of which threaten the continued existence of the Tibetan people, constitutes serious violations of the Geneva Conventions (1949), The Genocide Convention, the Universal Declaration of Human Rights and numerous Human Rights treaties.
7. Consistent with the Resolutions 1723 (xvi), New York and 2079 (xx) (1965) of the General Assembly and with the conclusions reached by the Conference of International Lawyers on "Issues Relating to Self-Determination and Independence for Tibet"; (1993), by the Permanent Peoples' Tribunal, sitting in Strasbourg in 1988, the workshop unanimously found that the Tibetan people possess the full right to self-determination, including that of external self-determination. By reaching this conclusion, the following factors were given special importance:
 - (a) Tibetans are a "people" with the right to self-determination under the definition adopted by the UNESCO Committee of Experts on the Rights of Peoples;
 - (b) Tibetans had their own state and governed themselves for centuries before the Chinese invasion;
 - (c) China's aggression and occupation of Tibet constitutes a violation of the UN Charter, the Declaration on Friendly Relations and other international instruments;
 - (c) The Chinese Communist Party, in its successive resolutions before coming to power in China, recognised the right of Tibetans to self-determination; the government of the
 - (d) China's present treatment of Tibet is that of a colonial master over its colony. Colonialism exists where there is political oppression and economic exploitation by an alien power. Under these criteria, Tibet is effectively a colony of China.

- (e) The United Nations Special Rapporteurs, human rights organisations, and Tibetan witnesses, all testify to the fact that there are systematic and gross violations of human rights in Tibet. They are of such a nature and scale that Tibetans continuously experience a state of persecution.
 - (f) Peace and stability of Tibet, and of the region, continues to be threatened by the Chinese massive military and civilian presence in Tibet. Whereas the creation of a 'zone of *Ahimsa*,' as proposed by His Holiness the Dalai Lama, would enhance peace and security.
 - (g) The nonviolent character of the Tibetan struggle for freedom, sets an important example to the rest of the world and must not be ignored. Recognizing that the exercise of self-determination is a prerequisite to the enjoyment of other human rights, it is imperative that the international community provide active support to the Tibetan people and their government in their efforts to achieve self-determination, in accordance with the principles of the Charter of the United Nations and of the UN Declaration on Friendly Relations (1970).
8. The participants of the workshop are convinced that earnest negotiations between the Government of the People's Republic of China and His Holiness the Dalai Lama and his government provide the best possibility for a lasting solution to the question of Tibet and for the attainment of the aspirations of the Tibetan people. They expressed support for the initiatives taken in this regard by the Dalai Lama and took note of the commitment to negotiate expressed by Mr. Deng Xioping and the Chinese government.

RECOMMENDATIONS

The participants in the workshop proposed the following recommendations:

A. *To the Government of the People's Republic of China*

1. To respond positively to the initiatives taken for negotiation by His Holiness the Dalai Lama and to enter into negotiations with him or his representatives without preconditions, in order to seek a comprehensive practical solution.
2. To put an end to the population transfer of Chinese into Tibet, and to adopt legislation prohibiting the acquisition of land or other real property by non-Tibetans in Tibet.
3. To reunite the three provinces of Tibet, U-Tsang, Kham and Amdo, (Cholkha-Sum) into one administrative region.

B. *To the International Community of State Governments, the United Nations and other International Organizations, NGO's and Business Corporations;*

1. To receive His Holiness the Dalai Lama and officials of his government as the legitimate representatives of the Tibetan people, and provide them with effective support in their nonviolent struggle for self-determination, human rights, and democracy;
2. To cease and/or withdraw funding from any project in Tibet likely to result in population transfer;
3. To impress upon the Chinese government and people the importance of starting negotiations with His Holiness the Dalai Lama or his representatives, without preconditions, in all their bilateral or multilateral contacts with officials of the government or with other Chinese persons;
4. To convey to the Chinese government and people all aspects of the question of Tibet as reflected in this document and to impress upon them the need to restore the *status-quo-ante* in accordance with the requirements of international law with respect to the illegal seizure of territory by China, and the population transfer.

TAN CHUNG*: Due to unavoidable circumstances, I attended only three sessions of the Workshop on 24th afternoon and 25th, February 1996. As I missed the background statements and the crucial session discussing history to which I could have made a contribution, I did not find it easy to intervene in the subsequent sessions which were action oriented. But, I was happy to be invited to the Workshop, and have learnt a lot.

The same reason which had hampered my participation in the discussions serves as a restraint for me to comment on the "Proceedings". My superficial impression was that His Holiness Dalai Lama's noble spirit did not prevail entirely in the course of the workshop, except in the brief intervention of Prof. Rinpoche. There were also misinformations as well as a rigid attitude which did not try to take stock of the rapidly changing situation inside the People's Republic of China and Tibet: I also had the impression that certain modern western values were being imposed on the study of the history of Tibet, on the relations between Tibet and the central authorities of China which were far more complicated than what was being made out by some speakers in the workshop. I also felt that the atmosphere of the Workshop was a little too negative and pessimistic, depicting the mankind in general, and China in particular, as a world where inhumane motivations prevailed, depicting the future of Tibet in a grim prospect. I could understand the hurt feelings of the Tibetan people, and thought it highly abnormal that Dalai Lama and his devout followers are estranged from the land and people to whom they belonged. But, I have full confidence in the possibility of a future satisfactory solution of the historical problem. Tibet was, is, and will always be a thriving people and culture, and a land of attraction, pilgrimage and tourism for the entire world. Tibet will never vanish from the earth.

Among the "Recommendations", I only appreciate the 3rd and 4th in B, and hope that Dalai Lama and the Chinese authorities will reopen their dialogue soon. I shall be happy to make my humble contribution towards this goal if my services are needed.

* Written statement submitted after the Workshop.

PART EIGHT

DOCUMENTS

I. UN GENERAL ASSEMBLY RESOLUTIONS

1. Resolution 1353 (XIV), New York, 1959

The General Assembly,

Recalling the principles regarding fundamental human rights and freedoms set out in the Charter of the United Nations and in the Universal Declaration of Human Rights adopted by the General Assembly on 10 December 1948,

Considering that the fundamental human rights and freedom to which the Tibetan people, like all others, are entitled include the right to civil and religious liberty for all without distinction,

Mindful also of the distinctive cultural and religious heritage of the people of Tibet and the autonomy which they have traditionally enjoyed,

Gravely concerned at reports, including the official statements of His Holiness the Dalai Lama, to the effect that the fundamental human rights and freedoms of the people of Tibet have been forcibly denied them,

Deploing the effect of these events in increasing international tension and embittering the relations between peoples at a time when earnest and positive efforts are being made by responsible leader to reduce tension and improve international relations.

- 1) *Affirms its belief* that respect for the principles of the Charter of the United Nations and the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of law;
- 2) *Calls for respect* for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life.

I. UN GENERAL ASSEMBLY RESOLUTIONS

2. Resolution 1723 (XVI), New York, 1961

The General Assembly,

Recalling its resolution 1353 (XIV) of 21 October 1959 on the question of Tibet,

Gravely concerned at the continuation of events in Tibet, including the violation of the fundamental human rights of the Tibetan people and suppression of the distinctive cultural and religious life which they have traditionally enjoyed,

Noting with deep anxiety the severe hardships which these events have inflicted on the Tibetan people, as evidenced by the large-scale exodus of Tibetan refugees to the neighbouring countries,

Considering that these events violate fundamental human rights and freedoms set out in the Charter of the United Nations and the Universal Declaration of Human Rights, including the principle of self-determination of peoples and nations, and have deplorable effect of increasing international tension and embittering relations between peoples,

- 1) Reaffirms its conviction that respect for the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of law;
- 2) Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination;
- 3) Expresses the hope that Member States will make all possible efforts, as appropriate, towards achieving the purposes of the present resolution.

I. UN GENERAL ASSEMBLY RESOLUTIONS

3. Resolution 2079 (XX), New York, 1965

The General Assembly

Bearing in mind the principles relating to human rights and fundamental freedoms set forth in the Charter of the United Nations and proclaimed in the Universal Declaration of Human Rights,

Reaffirming its resolutions 1353 (XIV) of 21 October 1959 and 1723 (XVI) of 20 December 1961 on the question of Tibet,

Gravely concerned at the continued violation of the fundamental rights and freedom of the people of Tibet and the continued suppression of their distinctive cultural and religious life, as evidenced by the exodus of refugees to the neighbouring countries,

- 1) Deplores the continued violation of the fundamental rights and freedoms of the people of Tibet;
- 2) Reaffirms that respect for the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of law;
- 3) Declares its conviction that the violation of human rights and fundamental freedoms in Tibet and the suppression of the distinctive cultural and religious life of its people increase international tension and embitter relations between peoples;
- 4) Solemnly renews its call for the cessation of all practices which deprive the Tibetan people of the human rights and fundamental freedoms which they have always enjoyed;
- 5) Appeals to all States to use their best endeavours to achieve the purposes of the present resolution.

II. UN SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITY RIGHTS

Resolution 1991/10, Geneva, August 23, 1991

1) At its forty-third session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted, on 23 August 1991, resolution 1991/10 entitled "Situation in Tibet", as follows:

"The Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Guided by the principles of the Charter of the United Nations, the International Bill of Human Rights and other international instruments in the field of human rights,

Concerned at the continuing reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people,

- 1) Calls upon the Government of the People's Republic of China fully to respect the fundamental human rights and freedom of the Tibetan people;
- 2) Requests the Secretary-General to transmit to the Commission on Human Rights information on the situation in Tibet provided by the Government of China and by other reliable sources."

III. WORLD CONFERENCE ON HUMAN RIGHTS: THE VIENNA DECLARATION AND PROGRAMME OF ACTION,

JUNE 1993 (EXTRACTS)

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

In this framework, enhancement of international co-operation in the field of human rights is essential for the full achievement of the purposes of the United Nations.

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognises the right of people to take any legitimate action, in accordance with the Charter of the United Nations, to realise their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realisation of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, this shall not be constructed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

3. Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.

4. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international co-operation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialised agencies related to human rights should therefore further enhance the co-ordination of their activities based on the consistent and objective application of international human rights instruments.

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social and economic development, in conformity with the Charter of the United Nations.

7. The process of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law.

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening

and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

9. The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratisation and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development.....

27. Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realisation of human rights and indispensable to the process of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice.

28. The World Conference on Human Rights expresses its dismay at massive violations of human rights especially in the form of genocide, "ethnic cleansing" and systematic rape of women in war situations, creating mass exodus of refugees and displaced persons. While strongly condemning such abhorrent practices it reiterates the call that perpetrators of such crimes be punished and such practices immediately stopped.

29. The World Conference on Human Rights expresses grave concern about continuing human rights violations in all parts of the world in disregard of standards as contained in international human rights instruments and international humanitarian law and about the lack of sufficient and effective remedies for the victims.

The World Conference on Human Rights is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children, the elderly and the disabled. The Conference therefore calls upon States and all parties to armed conflicts strictly to observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions.

The World Conference on Human Rights reaffirms the right of the victims to be assisted by humanitarian organisations, as set forth in the Geneva Conventions of

1949 and other relevant instruments of international humanitarian law, and calls for the safe and timely access for such assistance.

30. The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.

31. The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realisation of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.

32. The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

33. The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasises the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at the national as well as international levels. The World

Conference on Human Rights notes that resource constraints and institutional inadequacies may impede the immediate realisation of these objectives...

39. Underlining the importance of objective, responsible and impartial information about human rights and humanitarian issues, the World Conference on Human Rights encourages the increased involvement of the media, for whom freedom and protection should be guaranteed within the framework of national law.

IV. FROM "SITUATION IN TIBET"

A NOTE BY THE SECRETARY-GENERAL SUBMITTED PURSUANT TO SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Resolution, 1991/10, Economic and Social Council,
E/CN.4/1992/37,
5 JANUARY 1992 (EXTRACTS)

B. Self-determination of the Tibetan People

17. The United Nations has already recognised the right to self-determination of the Tibetan people in General Assembly resolution 1723 (XVI), reaffirmed in resolution 2079 (XX). In the case of Tibet, self-determination overrides other principles of international law, such as non-interference and protection of territorial integrity because, *inter alia*: (a) Tibet is an occupied State under principles of international law; (b) the Tibetan people are subjected to a form of colonial or alien domination; and (c) as discussed above, the Tibetan people are subjected to continuing gross human rights violations under China's rule.

1. The Tibetans are a distinct people

18. The right to self-determination pertains to groups described as "peoples". While there is not as yet a universally agreed definition of a "people", we believe that under international law a people is identifiable both by the subjective perception of peoplehood, and by shared, objectively verifiable common characteristics, which may include race or ethnicity, language, culture, tradition, customs, or unique history. The Tibetan people satisfy these criteria. First, the history of relations between Chinese and Tibetans both before and after the occupation of Tibet in 1949-50 demonstrates a subjective perception of Tibetan peoplehood or national identity not only by Tibetans, but also by the Chinese. Second, the Tibetan people has objective characteristics of peoplehood distinguishing it from the people of China. The Tibetans inhabit a geographically distinct territory, the Tibetan plateau; their unique culture has existed and developed for centuries, subject to only occasional outside influences; they constitute a distinct racial or ethnic group; their language, part of the distinct Tibeto-Burmese group, differs from that of China in both spoken and written form;

their religion, a specialised development of Mahayana Buddhism, is distinct from that of China; and the Tibetans have a separate history.

2. Tibet is an occupied country

19. The right to self-determination indisputably belongs to countries that have been invaded and occupied by force. Despite China's claims in statements made to the United Nations, Tibet was an independent State in 1949, when the Chinese Communists sent a reported 80,000 troops to conquer Tibet, a peaceful country which maintained a standing army of approximately 8,000. Tibet at that time had long displayed the criteria of statehood, including its own head of State; flag; passports; army; systems of judiciary, post, and customs; taxation and monetary policy; its own effective government; and capacity to conduct its own international relations.

20. China's occupation of Tibet has long been a subject of international note and concern. In a recent document, the United States Congress concluded that "Tibet, including those areas incorporated into the Chinese provinces of Sichuan, Yunnan, Gansu and Qinghai, is an occupied country under the established principles of international law" (State Department Authorisation Act, signed into law on 28 October 1991). In its resolution, the Congress found that Tibet "has maintained throughout its history a distinctive and sovereign national, cultural and religious identity separate from that of China", as borne out by historical evidence including Chinese archival documents and recognition of Tibet by various other States. It is also to be noted that in August 1987, in a study prepared for the West German Parliament, its Scientific Research Service for International Law concluded that Tibet was an independent State at the time of its forcible incorporation into the Chinese State, and that China had not effectively acquired territorial title because of the prohibition, under international law, against annexation by force.

C. Tibetans are a people under colonial or alien domination

21. China's occupation of Tibet, which began in 1949, reveals many of the characteristics of a colonial relationship. Among these are: occupation through force by an occupying people that is ethnically, linguistically or culturally distinct from the occupied people; administration of the occupied territory by the colonial power; systematic discrimination against the occupied people; economic exploitation of those occupied; use of excessive force to stifle dissent; and deprivation of fundamental human rights belonging to a majority of the occupied people.

22. China maintains its occupation of Tibet through a standing force reported to number up to 250,000 and troops and paramilitary police. It is estimated that, since 1987, up to 4,000 Tibetans have been seized and interrogated; torture is routine, and there is credible evidence that many of those seized are tortured. Several Tibetans have reportedly been "disappeared" by the authorities. So-called "counter-revolutionaries" have been summarily executed publicly in the course of demonstrations and, in two cases since 1987, in prison. The Chinese employ a pervasive system of informers, creating an atmosphere of distrust in which Tibetan cannot trust Tibetan.

23. Chinese occupy most positions of real power in Tibet. The real power in Tibet appears to lie not with the Government but with the Communist Party and the People's Liberation Army. Although Tibetans hold posts at various levels of government, they do not hold significant positions of power in the Chinese Communist Party or the Army. The Chinese discriminate against Tibetans through an informal but de facto class system; since the Chinese occupied Tibet, the Tibetan people have been treated as second-class citizens in their own country. The Chinese attitude towards Tibetans betrays a sense of racial "superiority", as is evidenced by repeated references to the "backwardness" of Tibetans, even in official Chinese government publications. Chinese settlers, whose movement, into Tibet has caused international concern, are accorded special treatment: they receive favours and perquisites in housing, employment, ration cards, medical treatment and education. This informal but pervasive system of discrimination based on race or national origin has been documented by groups such as Asia Watch, and was a subject of inquiry by the Committee on the Elimination of Racial Discrimination pursuant to its critical consideration of China's periodic report in August 1990.

24. The Government of China systematically exploits Tibet's natural resources for its own benefit, without regard for ecological consequences, and without popular participation in governmental decision-making. Tibet's natural environment is being steadily and irreparably destroyed by a short-sighted policy of reaping immediate economic benefit. Among the most detrimental practices are massive deforestation, mining of uranium and other minerals, and nuclear weapons development; significantly, these resources are exported to China or otherwise exploited for the benefit of Chinese rather than Tibetans. Similarly, the benefits of subsidised development projects in Tibet—power stations and electricity, roads and airports, small-scale industry, and tourism—inure primarily to the benefit of the Chinese Government and Chinese settlers in Tibet.

25. Despite the Government of China's attempts to restrict the flow of information into and out of Tibet, there has emerged an alarming picture of human rights

violations in that country. Under China's rule there has appeared a pattern of systematic abridgement of fundamental rights and freedoms, which today threatens the cultural, religious and national identity of the Tibetan people.

26. Improving respect for human rights in Tibet will not fundamentally alter the situation unless it is accompanied by self-determination for the Tibetan people, for the human rights problems are inextricably linked to the Tibetans' resistance to foreign rule and China's attempts to repress that resistance. Therefore, efforts to persuade China to ameliorate the human rights situation in Tibet must incorporate pressure to address the root problem. China must be persuaded to seek a comprehensive solution to the question of Tibet by peaceful means, through negotiations with the legitimate representatives of the Tibetan people, chosen by the Tibetans themselves.

27. To further the process of promoting a non-violent solution to the Tibetan question in the interest of international peace and security, and in the interest of the restoration of basic human rights freedoms of the Tibetan people, we suggest that the Human Rights Commission appoint a Special Rapporteur on the Situation in Tibet. Because China has in large measure restricted human rights monitors' access to Tibet and because it is difficult to obtain accurate information from the current debate, it would be particularly useful to have a Special Rapporteur study the situation in Tibet and report his findings to the United Nations....

V. FRAMEWORK FOR SINO-TIBETAN NEGOTIATIONS, STRASBOURG PROPOSAL*

15 JUNE 1988

We are today living in a very interdependent world. One nation's problems can no longer be solved by itself. Without a sense of universal responsibility our very survival is in danger. I have, therefore, always believed in the need for better understanding, closer co-operation and greater respect among the various nations of the world. The European Parliament is an inspiring example. Out of the chaos of war, those who were once enemies have, in a single generation, learned to co-exist and co-operate. I am, therefore, particularly pleased and honoured to address the gathering at the European Parliament.

As you know, my own country Tibet is undergoing a very difficult period. The Tibetans — particularly those who live under Chinese occupation — yearn for freedom and justice and a self-determined future, so that they are able to fully preserve their unique identity and live in peace with their neighbours.

For over a thousand years we Tibetans have adhered to spiritual and environmental values in order to maintain the delicate balance of life across the high plateau on which we live. Inspired by the Buddha's message of non-violence and compassion and protected by our mountains, we sought to respect every form of life and to abandon war as instrument of national policy.

Our history, dating back more than two thousand years, has been one of independence. At no time, since the founding of our nation in 127 B.C.; have we Tibetans conceded our sovereignty to a foreign power. As with all nations, Tibet experienced periods in which our neighbours — Mongol, Manchu, Chinese, British and the Gorkhas of Nepal — sought to establish influence over us. These eras have been brief and the Tibetan people have never accepted them as constituting a loss of our national sovereignty. In fact, there have been occasions when Tibetan rulers conquered vast areas of China and other neighbouring states. This, however, does not mean that we Tibetans can lay claim to these territories.

* Speech by His Holiness the Dalai Lama at the European Parliament, Strasbourg, 15 June 1988.

In 1949 the People's Republic of China forcibly invaded Tibet. Since that time Tibet has endured the darkest period in its history. More than a million of our people have died as a result of the occupation. Thousands of monasteries were reduced to ruins. A generation has grown up deprived of education, economic opportunity and a sense of its own national character. Though the current Chinese leadership has implemented certain reforms, it is also promoting a massive population transfer onto the Tibetan plateau. This policy has already reduced the six million Tibetans to a minority. Speaking for all Tibetans, I must sadly inform you, our tragedy continues.

I have always urged my people not to resort to violence in their efforts to redress their suffering. Yet I believe all people have the moral right to peacefully protest injustice. Unfortunately, the demonstrations in Tibet have been violently suppressed by the Chinese police and military. I will continue to counsel for non-violence, but unless China forsakes the brutal methods it employs, Tibetans cannot be responsible for a further deterioration in the situation.

Every Tibetan hopes and prays for the full restoration of our nation's independence. Thousands of our people have sacrificed their lives for the struggle. Even in recent months. Tibetans have bravely sacrificed their lives to achieve this precious goal. On the other hand, the Chinese totally fail to recognise the Tibetan people's aspirations and continue to pursue a policy of brutal suppression.

I have thought for a long time on how to achieve a realistic solution to my nation's plight. My cabinet and I solicited the opinions of many friends and concerned persons. As a result, on September 21, 1987, at the Congressional Human Rights Caucus in Washington, D.C. I announced a Five Point Peace Plan for Tibet. In it I called for the conversion of Tibet into a zone of peace, a sactury in which humanity and Nature can live together in harmony. I also called for respect for human rights and democratic ideals, environmental protection, and a halt to the Chinese population transfer into Tibet.

The fifth point of the Peace Plan called for earnest negotiations between the Tibetans and the Chinese. We have, therefore, taken the initiative to formulate some thoughts which, we hope, may serve as a basis for resolving the issue of Tibet. I would like to take this opportunity to inform the distinguished gathering here of the main points of our thinking.

The whole of Tibet known as Cholka-Sum (U-Tsang, Kham and Amdo) should become a self-governing democratic political entity founded on law by agreement of the people for the common good and the protection of themselves and their environment, in association with the People's Republic of China.

The Government of the People's Republic of China could remain responsible for Tibet's foreign policy. The Government of Tibet should, however, develop and maintain relations, through its own Foreign Affairs Bureau, in the fields of commerce, education, culture, religion, tourism, science, sports and other non-political activities. Tibet should join international organisation concerned with such activities.

The Government of Tibet should be founded a constitution or basic law. The basic law should provide for a democratic system of government entrusted with the task of ensuring economic equality, social justice and protection of the environment. This means that the Government of Tibet will have the right to decide on all affairs relating to Tibet and the Tibetans.

As individual freedom is the real source and potential of any society's development, the Government of Tibet would seek to ensure this freedom by full adherence to the Universal Declaration of Human Rights including the rights to speech, assembly, and religion. Because religion constitutes the source of Tibet's national identity, and spiritual values lie at the very heart of Tibet's rich culture, it would be the special duty of the Government of Tibet to safeguard and develop its practice.

The government should be comprised of a popularly elected Chief Executive, a bicameral legislative branch, and an independent judicial system. Its seat should be in Lhasa.

The social and economic system of Tibet should be called to ensure that Tibet becomes a genuine sanctuary of peace through demilitarisation. Until such a peace conference can be convened and demilitarisation and neutralisation achieved. China could have the right to maintain a restricted number of military installations in Tibet. These must be solely for defence purposes.

In order to create an atmosphere of trust conducive to fruitful negotiations, the Chinese Government should cease its human rights violations in Tibet and abandon its policy of transferring Chinese to Tibet.

These are the thoughts we have in mind. I am aware that many Tibetans will be disappointed by the moderate stand they represent. Undoubtedly, there will be much discussion in the coming months within our own community, both in Tibet and in exile. This, however, is an essential and invaluable part of any process of change. I believe these thoughts represent the most realistic means by which to establish Tibet's separate identity and restore the fundamental rights of the Tibetan people while accommodating China's own interest. I would like to emphasise, however, that whatever the outcome of the negotiations with the Chinese may be, the Tibetan people themselves must be the ultimate deciding authority. Therefore, any proposal will contain a comprehensive procedural plan to ascertain the wishes of the Tibetan people in a nationwide referendum.

I would like to take this opportunity to state that I do not wish to take any active part in the Government of Tibet. Nevertheless, I will continue to work as much as I can for the well-being and happiness of the Tibetan people as long as it is necessary.

We are ready to present a proposal to the Government of the People's Republic of China based on the thoughts I have presented. A negotiating team representing the Tibetan government has been selected. We are prepared to meet with the Chinese to discuss details of such a proposal aimed at achieving an equitable solutions.

We are encouraged by the keen interest being shown in our situation by a growing number of governments and political leaders, including former President Jimmy Carter of the United States. We are encouraged by the recent change in China which have brought about a new group of leadership, more pragmatic and liberal.

We urge the Chinese Government and leadership to give serious and substantive consideration to ideas I have described. Only dialogue and a willingness to look with honesty and clarity at the reality of Tibet can lead to a viable solution. We wish to conduct discussion with the Chinese Government bearing in mind the larger interest of humanity. Our proposal will therefore be made in a spirit of conciliation and we hope that the Chinese will respond accordingly.,

My country's unique history and profound spiritual heritage render it ideally suited for fulfilling the role of a sanctuary of peace at the heart of Asia. Its historic status as a neutral buffer state, contributing to the stability of the entire continent, can be restored. Peace and security for Asia as well as for the world at large can be enhanced. In the future, Tibet need no longer be an occupied land, oppressed by force, unproductive and scarred by suffering. It can become a free haven where humanity and nature live in harmonious balance; a creative model for the resolution of tensions afflicting many areas throughout the world.

The Chinese leadership needs to realise that colonial rule over occupied territories is today anachronistic. A genuine union or association can only come about voluntarily, when there is satisfactory benefit to all the parties concerned. The European Community is a clear example of this. On the other hand, even one country or community can break into two or more entities when there is a lack of trust of benefit, and when force is used as the principle means of rule.

I would like to end by making a special appeal to the honourable members of the European Parliament and through them to their respective constituencies to extend their support to our efforts. A resolution of the Tibetan problem within the framework that we propose will not only be for the mutual benefit of the Tibetan and Chinese people but will also contribute to regional and global peace and stability. I thank you for providing me the opportunity to share my thoughts with you.

VI (i) HIS HOLINESS THE DALAI LAMA'S LETTER TO
DENG XIAOPING,

11 SEPTEMBER 1992

Dear Mr. Deng Xiaoping,

I am pleased that direct contact has once again been established between us. I hope that this will lead to an improvement of relations and the development of mutual understanding and trust.

I have been informed of the discussions Mr. Ding Guangen had with Gyalo Thondup on June 22, 1992, and the position of the Government of China concerning negotiations for a solution to the Tibetan question. I am disappointed with the hard and inflexible position conveyed by Mr. Ding Guangen, particularly the emphasis on pre-conditions for negotiations.

However, I remain committed to the belief that our problems can be solved only through negotiations, held in an atmosphere of sincerity and openness, for the benefit of both the Tibetan and Chinese people. To make this possible, neither side should put up obstacles, and neither side should, therefore, state pre-conditions.

For meaningful negotiations to take place it is essential to have mutual trust. Therefore, in order to create trust, I believe it is important for the leaders and people of China to know of the endeavours I have made so far. My three representatives carry with them a letter from me, accompanied by a detailed note of my views and my efforts through the years to promote negotiations in the best interest of the Tibetan and Chinese people. They will answer and discuss any questions and points you wish to raise. It is my hope that through these renewed discussions we will find a way that will lead us to negotiations.

On my part, I have put forward many ideas to solve our problem. I believe that it is now time for the Chinese government to make a genuinely meaningful proposal if you wish to see Tibet and China live together in peace. I therefore, sincerely hope that you will respond in a spirit of openness and friendship.

Yours sincerely,

(HH the Dalai Lama)

VI (ii) NOTE ACCOMPANYING HIS HOLINESS' LETTER TO DENG XIAOPING

11 SEPTEMBER 1992

On June 22, 1992, Mr. Ding Guangen, head of the United Front Works Department of CCP Central Committee, met with Mr. Gyalo Thondup in Beijing and restated the assurance given by Mr. Deng Xiaoping to Mr. Gyalo Thondup in 1979 that the Chinese government was willing to discuss any issue with us except total independence.

Mr. Ding Guangen also said that, in the government's view, "the Dalai Lama is continuing with independence activities," but the Chinese government was willing to immediately start negotiations as soon as I give up the independence of Tibet. This position, repeatedly stated in the past by the Chinese government, shows that the Chinese leadership still does not understand my ideas regarding the Tibetan-Chinese relationship. Therefore, I take this opportunity to clarify my position through this note.

1. It is an established fact that Tibet and China existed as separate countries in the past. However, as a result of misrepresentations of Tibet's unique relations with Mongol and the Manchu Emperors, disputes arose between Tibet and the Kuomintang and the present Chinese government. The fact that the Chinese government found it necessary to conclude a "17-Point Agreement" with the Tibetan government in 1951 clearly shows the Chinese government's acknowledgement of Tibet's unique position.

2. When I visited Beijing in 1954, I had the impression that most of the Communist Party leader I met there were honest, straight forward and openminded. Chairman Mao Zedong, in particular, told me on several occasions that the Chinese were in Tibet only to help Tibet harness its natural resources and use them for the development of the country; General Zhang Jingwu and General Fan Ming, were in Tibet to help me and the people of Tibet, and not to rule the Tibetan government and people, and that all Chinese officials in Tibet were there to help us and to be withdrawn when Tibet had progressed. Any Chinese official who did not act accordingly would be sent back to China. Chairman Mao went on to say that it had now been decided

to establish "Preparatory Committee for the Establishment of the Tibet Autonomous Region" instead of the earlier plan to put Tibet under the direct control of the Chinese government through a "Military-Political Commission".

At my last meeting with Chairman Mao, before I left China, he gave me a long explanation about democracy. He said that I must provide leadership and advised me on how to keep in touch with the views of the people. He spoke in a gentle and compassionate manner which was moving and inspiring.

While in Beijing, I told Premier Zhou Enlai that we Tibetans were fully aware of our need to develop politically, socially and economically and that in fact I had already taken steps towards this.

On my way back to Tibet, I told General Zhang Guohua that I had gone to China with doubts and anxiety about the future of my people and country, but had now returned with great hope and optimism and a very positive impression of the Chinese leader. My innate desire to serve my people, especially the poor and the weak, and the prospect of mutual co-operation and friendship between Tibet and China made me feel hopeful and optimistic about the Tibet's future development. This was how I felt at that time about the Tibetan-Chinese relationship.

3. When the "Tibet Autonomous Region Preparatory Committee" was set up in Lhasa in 1956, there was no alternative but to work sincerely with it for the interest and benefit of both parties. However, by then the Chinese authorities had already started to use unthinkable brutal force to impose Communism on the Tibetan people of the Kham and Amdo areas, particular in Lithang. This increased the resentment of the Tibetans against Chinese policies, leading to open resistance.

I could not believe that Chairman Mao would have approved of such repressive policy because of the promises he had made to me when I was in China. I, therefore, wrote three letters to him explaining the situation and seeking an end to the repression. Regrettably, there was no reply to my letters.

In late 1956, I visited India to attend Buddha Jayanti, the anniversary of the birth of Buddha. At that time, many Tibetans advised me not to return to Tibet, and to continue talks with China from India. I also felt that I should stay in India for the time being. While in India, I met Premier Zhou Enlai and told him how deeply saddened I was by the military repression inflicted upon Tibetans in Kham and Amdo in the name of "reforms". Premier Zhou Enlai said that he regarded these matters as mistakes committed by Chinese officials and that "reforms" in Tibet would be carried out only in accordance with the wishes of the Tibetan people, and that in fact the Chinese government had already decided to postpone the "reforms" in Tibet by six years. He then urged me to return to Tibet as soon as possible in order to prevent further outbreaks of unrest.

According to the Indian Prime Minister, Jawaharlal Nehru, Premier Zhou Enlai told him that the Chinese government "did not consider Tibet as a province of China. The people were different from the people of China proper. Therefore, they [the

Chinese] considered Tibet as an autonomy." Prime Minister Nehru told me that the had assurance from Premier Zhou Enlai that Tibet's autonomy would be respected and, therefore, advised me to make efforts to safeguard it and co-operated with China in bringing about reforms.

By then, the situation in Tibet had become extremely dangerous and desperate. Nevertheless, I decided to return to Tibet to give the Chinese government another opportunity to be able to implement their promises. On my return to Lhasa through Dromo, Gyangtse and Shigatse I had many meetings with Tibetan and Chinese officials; I told them that the Chinese were not in Tibet to rule the Tibetans, that the Tibetans were not subjects of China, and that since the Chinese leader had promised to establish Tibet as an autonomous region with full internal freedoms, we all had to work to make it succeed. I emphasised the point that the leaders of China had assured me that all Chinese personnel in Tibet were there to help us, and that if they behaved otherwise, they could be going against the order of their own government. I believe, I was once again doing my best to promote co-operation between Tibet and China.

4. However, because of the harsh military repression in the Kham and Amdo parts of eastern Tibet, thousands of young and old Tibetans, unable to live under such circumstances, began to arrive in Lhasa as refugees. As a result of these Chinese actions the Tibetan people felt great anxiety and began to lose faith in the promises made by China. This led to greater resentment and a worsening of the situation. Nevertheless, I continued to counsel my people to seek a peaceful solution and to show restraint. At the risk of losing the trust of the Tibetan people I did my best to prevent a breakdown of the communications with the Chinese officials in Lhasa.

But the situation continued to deteriorate and finally exploded in the tragic events of 1959 which forced me to leave Tibet.

Faced with such a desperate situation, I had no alternative but to appeal to the United Nations. The United Nations, in turn, passed three resolutions on Tibet in 1959, 1961 and 1965, where in it called for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms including their right to self-determination and asked member States to make all possible efforts towards achieving that purpose.

The Chinese government did not respect the United Nations resolutions. In the meantime, the Cultural Revolution started and there was absolutely no opportunity for solving the Tibetan-Chinese problems. It was, in fact, not even possible to identify a leader with whom we could talk.

5. In spite of my unfulfilled hopes and disappointments in dealing with the Chinese government, and since Tibet and China will always remain as neighbours, I am convinced that we must strive to find a way to co-exist in peace and help each

other. This, I believe, is possible and worthy of our efforts. With this conviction I said in my statement to the Tibetan people on March 10, 1971: "In spite of the fact that we Tibetans have to oppose Communist China, I can never bring myself to hate her people. Hatred is not a sign of strength, but of weakness. When Lord Buddha said that hatred cannot be overcome by hatred, he was not only being spiritual. But his words reflect the practical reality of life. Whatever one achieves through hatred will not last long. On the other hand, hatred will only generate more problems. And for the Tibetan people who are faced with such a tragic situation, hatred will only bring additional depression. Moreover, how can we hate a people who do not know what they are doing. We cannot even hate the Chinese leaders for they have suffered tremendously for their nation and the cause which they believe to be right. I do not believe in hatred, but I do believe, as I have always done, that one day truth and justice will triumph."

In my March 10 statement of 1973, referring to the Chinese claim of Tibetans being made the "masters of the country" after being "liberated from the three big feudal lords" and enjoying "unprecedented progress and happiness", I stated: "The aim of the struggle of the Tibetans outside Tibet is the attainment of the happiness of the Tibetan people. If the Tibetans in Tibet are truly happy under the Chinese rule then there is no reason for us here in exile to argue otherwise."

Again, in my March 10, 1979 statement, I welcomed Mr. Deng Xiaoping's statement "to seek truth from facts", to give the Chinese people their long cherished rights, and of the need to acknowledge one's own mistakes and shortcomings. While commending these signs of honesty, progress and openness, I said: "The present Chinese leaders should give up the past dogmatic narrow-mindedness and fear of losing face and recognise the present world situation. They should accept their mistakes, the realities, and the right of all people of the human race to equality and happiness. Acceptance of this should not be merely on paper, it should be put into practice. If there are accepted and strictly followed, all problems can be solved with honesty and justice." With this conviction I renewed my efforts to promote reconciliation and friendship between China and Tibet.

6. In 1979, Mr. Deng Xiaoping invited Mr. Gyalo Thondup to Beijing and told him that apart from the question of total independence all other issues could be discussed and all problems can be resolved. Mr. Deng further told Mr. Thondup that we must keep in contact with each other and that we could send fact-finding delegations to Tibet. This naturally gave us great hopes of resolving our problems peacefully and we started sending delegations to Tibet.

On March 13, 1981, I sent a letter to Mr. Deng Xiaoping in which I said, "The three fact-finding delegations have been able to find out both the positive and negative aspects of the situation in Tibet. If the Tibetan people's identity is preserved and if they are genuinely happy, there is no reason to complain. However, in reality

over 90% of the Tibetans are suffering both mentally and physically, and are living in deep sorrow. These sad conditions has not been brought about by natural disasters, but by human actions. Therefore, genuine efforts must be made to solve the problem in accordance with the existing realities in a reasonable way.

In order to do this, we must improve the relationship between China and Tibet as well as between Tibetans in and outside Tibet. With truth and equality as our foundation we must try to develop friendship between Tibetans and Chinese in future through better understanding. Time has come to apply our common wisdom in a spirit of tolerance and broadmindedness to achieve genuine happiness for the Tibetan people with a sense of urgency. On my part, I remain committed to contribute to the welfare of all human beings and in particular the poor and the weak to the best of my ability without making any distinction based on national boundaries.

I hope you will let me know your views on the foregoing points".

There was no reply to my letter. Instead, on July 28, 1981, General Secretary Hu Yaobang gave Mr. Gyalo Thondup a document, entitled "Five Point Policy towards the Dalai Lama."

This was a surprise and a great disappointment. The reason for our consistent efforts to deal with the Chinese government is to achieve lasting and genuine happiness for six million Tibetans who must live as neighbours of China from generation to generation. However, the Chinese leadership chose to ignore this and, instead, attempted to reduce the whole issue to that of my personal status and the conditions for my return without any willingness to address the real underlying issues.

Nevertheless, I continued to place hope in Mr. Deng Xiaoping's statement "seeking truth from facts" and his policy of liberalisation. Therefore, I sent several delegations to Tibet and China and wherever there was an opportunity we explained our views to promote understanding through discussion and dialogue. As initially suggested by Mr. Deng Xiaoping I agreed to send Tibetan teachers from India to improve the education of Tibetans in Tibet. But for one reason or the other the Chinese government did not accept this.

These contacts resulted in four fact-finding delegations to Tibet, two delegations to Beijing, and the start of family visitations between the Tibetans in Tibet and in exile. However, these steps did not lead to any substantial progress in resolving the problems between us owing to the rigidity of the Chinese leaders' positions which, I believe, failed to reflect Mr. Deng Xiaoping's policies.

7. Once again, I did not give up hope. This was reflected in my annual March 10 statements to the Tibetans people in 1981, 1983, 1984 and 1985, wherein I said the following:

"... past history has disappeared in the past. What is more relevant is that in the future there actually must be real peace and happiness through developing friendly and meaningful relations between China and Tibet.

For this to be realised, it is important for both sides to work hard to have tolerant understating and be open-minded". (1981)

"The right to express one's ideas and to make every effort to implement them enables people everywhere to become creative and progressive. This engenders human society to make rapid progress and experience genuine harmony ... The deprivation of freedom to express one's views, either by force or by other means, is absolutely anachronistic and a brutal form to oppression . . . The people of the world will not only oppose it, but will condemn it. Hence, the six million Tibetan people must have the right to preserve, and enhance their cultural identity and religious freedom, and find fulfilment of their free self-expression, without interference from any quarters. This is reasonable and just." (1983)

"Irrespective of varying degrees of development and economic disparities, continents, nations, communities, families, in fact, all individuals are dependent on one another for their existence and well-beings. Every human being wishes for happiness and does not want suffering. By clearly realising this, we must develop mutual compassion, love, and a fundamental sense of justice. In such an atmosphere there is hope that problems between nations and problems within families can be gradually overcome and that people can live in peace and harmony. Instead, if people adopt an attitude of selfishness, domination and jealousy, the world at large, as well as individuals, will never enjoy peace and harmony. Therefore, I believe that human relations based on mutual happiness". (1984)

". . . in order to achieve genuine happiness in any human society, freedom of thought is extremely important. This freedom of thought can only be achieved from mutual trust, mutual understanding and the absence of fear . . . In the case of Tibet and China too, unless we can remove state of mutual fear and mistrust, unless we can develop a genuine sense of friendship and goodwill the problems that we face today will continue to exist.

It is important for both of us to learn about one another . . . It is now for the Chinese to act according to the enlightened ideals and principles of the modern times; to come forward with an open mind and make a serious attempt to know and understand the Tibetan people's viewpoint and their true feelings and as irritations . . . It is wrong to react with suspicion or offence to the opinions that are contrary to one's own way of thinking. It is essential that differences of opinion be examined and discussed openly. When differing viewpoints are frankly stated and sensibly discussed on an equal footing, the decisions or agreements reached as a result will be genuine and beneficial to all concerned. But so long as there is a

contradiction between thought and action, there can never be genuine and meaningful agreements.

So, at this time, I feel most important thing for us is to keep in close contact, to express our views frankly and to make sincere efforts to understand each other. And, through eventual improvement inhuman relationship, I am confident that our problems can be solved to our mutual satisfaction.(1985)

In these and other ways I expressed my views clearly. But, there was no reciprocity to my conciliatory approaches.

8. Since all the exchanges between Tibetans and Chinese yielded no results I felt compelled to make public my view on the steps necessary for an agreeable solution to the fundamental issues. On September 21, 1987, I announced a Five Point Peace Plan in the United States of America. In its introduction, I said that in the hope of real reconciliation and lasting solution to the problem, it was my desire to take the first step with this initiative. This plan, I hoped would in the future contribute to the friendship and co-operation among all the neighbouring countries including the Chinese people for their good and benefit. The basic elements were:

1. Transformation of the whole of Tibet into a zone of ahimsa (peace and non-violence);
2. Abandonment of China's population transfer policy which threatens the very existence of the Tibetans as a people;
3. Respect for the Tibetan People's fundamental human right and democratic freedoms;
4. Restoration and protection of Tibet natural environment and the abandonment of China's use of Tibet for the production of nuclear weapons and dumping of nuclear waste;
5. Commencement of earnest negotiations on the future status of Tibet and of relations between the Tibetan and the Chinese peoples.

As a response to this initiative, Mr. Yang Mingfu met Mr. Gyalo Thondup on October 17, 1987 and delivered a message containing five points criticising me for my above peace initiative and accusing me of having instigated demonstrations in Lhasa of September 27, 1987 and of having worked against the interest of Tibetan people.

This response, far from giving serious thought to my sincere proposal for reconciliation, was disappointing and demeaning.

Despite this, I tried once again to clarify our views in a detailed 14 Point response on December 17, 1987.

9. On June 15, 1988, at the European Parliament in Strasbourg, I once again

elaborated on the Five-point Peace Plan. I proposed as a framework for negotiations to secure the basic rights of the Tibetan people, China could remain responsible for Tibet's foreign policy and maintain a restricted number of military installations in Tibet for defence until a regional peace conference is convened and Tibet is transformed into a neutral peace sanctuary. I was criticised by many Tibetans for this proposal. My idea was, to make it possible for China and Tibet to stay together in lasting friendship and to secure the right for Tibetans to govern their own country. I sincerely believe that in the future a demilitarised Tibet as a zone of ahimsa will contribute to harmony and peace not only between Tibetan and Chinese, but to all the neighbouring countries and the entire region.

10. On September 23, 1988, the Chinese government issued a statement that China was willing to begin negotiations with us. The announcement stated that the date and venue for the negotiations would be left to the Dalai Lama. We welcomed this announcement from Beijing and responded on October 25, 1988, proposing January 1989 as the time and Geneva, an internationally recognised neutral venue, as our choices. We announced that we had a negotiation team ready and named the members of the team.

The Chinese government responded on November 18, 1988, rejecting Geneva and expressing preference for Beijing or else Hong Kong, as the venue. They further stated that my negotiation team could not include "a foreigner" and consist only of "younger people", and that it should have older people, including Mr. Gyalo Thondup. We explained that the foreigner was only a legal advisor and not an actual member of the negotiating team and that Mr. Gyalo Thondup would also be included as an advisor to the team.

With a flexible and open attitude we accommodated the Chinese government's requests and agreed to send representatives to Hong Kong to hold preliminary meetings with representatives of the Chinese government. Unfortunately, when both sides had finally agreed on Hong Kong as the site for preliminary discussion the Chinese government refused to communicate any further and failed to live up to their own suggestion.

11. Although I championed this proposal for over two years there was no evidence of consideration or even an acknowledgement from Chinese government. Therefore, in my March 10th statement in 1991 I was compelled to state that unless the Chinese government responded in the near future I would consider myself free from any obligation to abide by the proposal I made in France.

Since there appeared to be no benefit from the many solutions I had advocated concerning Tibet and China, I had to find a new way. Therefore, in a speech at Yale University on October 9, 1991, I said:

... I am considering the possibility of a visit to Tibet myself on the spot and communicate directly with my people. By doing so, I also hope to

help the Chinese leadership to understand the true feelings of Tibetans. It would be important, therefore, for senior Chinese leaders to accompany me on such a visit, and that outside observers, including the press be present to see and report their findings.

Second, I wish to advise and persuade my people not to abandon non-violence as the appropriate form of struggle. My ability to talk to my own people can be a key factor in bringing about a peaceful solution. My visit could be a new opportunity to promote understand and create a basis for a negotiated solution.

Unfortunately this overture was immediately opposed by the Chinese Government. At that time, I was asked on many occasion by the press whether I was renewing the call for Tibetan independence since I had declared that the Strasbourg proposal was no longer valid. To these questions, I stated that I did not want to comment.

12. The Chinese government has, with great doubt and suspicion, described our struggle as a movement to restore the "old society" and that it was not in the interest of the Tibetan people but for the personal status and interest of the Dalai Lama. Since my youth, I was aware of the many faults of the existing system in Tibet and wanted to improve it. At that time I started the process of reform in Tibet. Soon after our flight to India we introduced democracy in our exile community, step by step. I repeatedly urged my people to follow this path. As a result, our exiled community now implements a system in full accordance with universal democratic principles. It is impossible for Tibet to ever revert to the old system of government. Whether my efforts for the Tibetan cause are as charged by the Chinese for my personal position and benefit or not is clear from my repeated statements that in a future Tibet, I will not assume any governmental responsibility or hold any political positions. Furthermore, this is reflected clearly in the Charter which governs the Tibetan Administration in Exile and in the "Guidelines for Future Tibet's Policy and the Basic Features of Its Constitution," which I announced on February 26, 1992.

In the conclusion of these guidelines relationship with its neighbours on equal terms and for mutual benefits. It shall be devoid of hostility and enmity".

Similarly, in my statement of March 10th 1992, I stated, "When a genuinely cordial relationship is established between the Tibetans and the Chinese, it will enable us not only to resolve the disputes between our two nations in this century, but will also enable the Tibetans to make a significant contribution through our rich cultural tradition for mental peace among the millions of young Chinese."

My endeavours to establish a personal relationship with Chinese leaders include my offer, presented through your Embassy in New Delhi in the latter part of 1980, for a meeting with General Secretary Hu Yaobang during one of his visits abroad at any convenient place. Again in December 1991, when Premier Li Peng visited New Delhi, I proposed to meet him there. These overtures were to no avail.

13. An impartial review of the above points will clearly show that my ideas and successive efforts have consistently sought solutions that will allow Tibet and China to live together in peace. In the light of these fact it is difficult to understand the purpose to the Chinese government's position that Mr. Deng Xiaoping's statement on Tibet of 1979 still stands and that as soon as "the Dalai Lama gives up his splittist activities," negotiations could start. This position has been repeated over and over again with no specific responses to my many initiatives.

If China wants Tibet to stay with China, then China must create the necessary conditions for this. The time has come now for the Chinese to show the way for Tibet and China to live together in friendship. A detailed step-by-step outline regarding Tibet's basic status should be spelt out. If such a clear outline is given, regardless of the possibility or an agreement or not, we Tibetans can then make a decision whether to live with China or not. If we Tibetans obtain our basic right to our satisfaction then we are not incapable of seeing the possible advantages of living with the Chinese.

I trust in the far sightedness and wisdom of China's leaders and hope that they will take into consideration the current global political changes and the need to resolve the Tibetan problem peacefully, promoting genuine lasting friendship between our two neighbouring peoples.

VII. STATEMENT OF THE INDIAN GOVERNMENT AT THE UNITED NATIONS, 1965

A significant development during the session in 1965 was India's support of the resolution. During the previous sessions in 1959 and 1961, India had abstained from voting. The full text is given below.

MR. ZAKARIA (INDIA): "As representatives are aware, for the past fifteen years the question of Tibet has been from time to time under the consideration of the United Nations. It was first raised here in 1950 at the fifth session of the General Assembly, but it could not be placed on the agenda, in fact, my country opposed its inclusion at that time because we were assured by China that it was anxious to settle the problem by peaceful means. However, instead of improving, the situation in Tibet began to worsen, and since then the question has come up several times before the General Assembly of the United Nations. Our delegations participated in the discussion at the Fourteenth Session in 1959 and although we abstained from voting we made it clear that because of our close historical, cultural and religious ties with the Tibetans, we could not but be deeply moved and affected by what was happening in that region. We hoped against hope that wiser counsel would prevail among the Chinese and that there would be an end to the sufferings of the people of Tibet."

"However, the passage of time has completely belied our hopes. As the days pass, the situation becomes worse and cries out for the attention of all mankind. As we know, ever since Tibet came under the stranglehold of China, the Tibetans have been subjected to a continuous and increasing ruthlessness which has few parallels in the annals of the world. In the name of introducing "democratic reforms" and of fighting a "counter-revolution," the Chinese have indulged in the worst kind of genocide and the suppression of a minority race."

"Two being with, we in India were hopeful that, as contacts between the Chinese and the Tibetans under the changed set-up became closer and more intimate, a more harmonious relationship would emerge. In fact, in 1965, as a result of his long talks with Mr. Chou En-lai the Chinese Premier, my late Prime Minister Jawaharlal Nehru felt confident that a mutually agreeable adjustment between the two peoples would be established. Even the Dalai Lama expressed a similar hope to our late Prime Minister, but, as subsequent events have proved, the Chinese never believed in living up to their assurances. They promised autonomy to Tibet and the safeguarding of its culture and religious heritage and traditions but, as the International

Commission of Jurists its June 1959 report on Tibet has emphasised they attempted on the contrary:

"To destroy the national, ethnical, racial and religious group of Tibetans as such by killing members of the group and by causing serious bodily and mental harm to members of the group".

"The world is aware that it was in protest against oppression and enslavement of Tibet that the Dalai Lama, who is held in the highest esteem by all Tibetans — and, indeed, respected as a spiritual leader by all Indians — fled from Lhasa and took asylum in India. Today there are thousands of Tibetan refugees in my country; approximately 50,000 who have left their hearth and homes and fled from their country to join their leader and seek refuge in India. The flight of these refugees still continues, for the Chinese have transformed Tibet into a vast military camp, where the indigenous Tibetans are made to live like hewers of wood and drawers of water."

"Although the relationship between Tibet and India is centuries old and has flourished all through the ages in all its manifestations, whether religious, cultural or economic, we have always taken care not to make that relationship a political problem. In recent years, despite the fact the Dalai Lama and thousands of his Tibetan followers have come to our land, and despite the fact that China has turned Tibet itself into a base of aggression against our northern borders, we have not exploited the situation. Undoubtedly, our national sentiments are now and again aroused as a result of the atrocities and cruelties committed by the Chinese against Tibetans, but we have exercised the greatest caution, for we believe that what should concern all of us is the much larger human problem, namely the plight of these good and innocent people who are victimised merely because they are different, ethnically and culturally, from the Chinese.

"Here I feel that it would not be out of place to put before this august Assembly the following facts which stand out stubbornly and irrefutably in connexion with Chinese policy in Tibet.

1. The autonomy guaranteed in the Sino-Tibetan Agreement of 1951 has from the beginning remained a dead letter.
2. Through increasing application of military force, the Chinese have in fact obliterated the autonomous character of Tibet.
3. There has been arbitrary confiscation of properties belonging to monasteries and individuals and Tibetan Government institutions.
4. Freedom of religion is denied to the Tibetans, and Buddhism is being suppressed together with the system of priests, monasteries, shrines and monuments.
5. The Tibetans are allowed no freedom of information or expression.
6. There has also been carried out a systematic policy of killing, imprisonment and deportation of those Tibetans who have been active in their opposition to Chinese rule.

7. The Chinese have forcibly transferred large numbers of Tibetan children to China in order to denationalise them, to indoctrinate them in Chinese ideology and to make them forget their own Tibetan religion, culture and way of life; and
8. There has also been a large-scale attempt to bring Han Chinese into Tibet and thereby make Tibet Chinese and overwhelm the indigenous people with a more numerous Chinese population.

"These atrocities, carried out ruthlessly with utter disregard for Tibetan sentiments and aspirations, and in complete violation of universally recognised human rights, and up to a frightful programmed of the suppression of a whole people. It surpasses anything that colonialists have done in the past to the peoples whom they ruled as slaves. That is why the United Nations General Assembly took note of the situation in Tibet and passed two resolutions, one in 1959 and the other in 1961, deploring the denial of these human rights to the people of Tibet by the Chinese Government and appealing to it to restore these rights to the Tibetan people. But all such pleas have fallen on deaf ears.

"Is this situation not a challenge to human conscience? Can we, dedicated as we are here to the Charter of the United Nations, and the Universal Declaration of Human Rights, remain mute spectators to the ghastly tragedy that is being enacted by a ruthless and oppressive regime in Tibet? In a recent appeal to the Secretary-General of the United Nations and to the Member States, which is contained in Document A/6081, the Dalai Lama, who has been a model of restraint, serenity and, indeed, of humanity, has warned the Organisation that the Chinese's, if unchecked would resort to still more brutal means of exterminating the Tibetan race. There is no limit to the hardships that the Tibetan people are suffering. Even their supply of food is restricted and controlled by the Chinese who first feed their military forces in Tibet, and then whatever remains is given to the indigenous Tibetans. My delegation naturally feels concerned about the terrible deterioration of the situation in Tibet. On December 17, 1964, for instance, the Dalai Lama was formally deprived of his position as Chairman of the Preparatory Committee for the Autonomous Region of Tibet and denounced as 'an incorrigible running dog of imperialism and foreign reactionaries,' this was immediately followed by the disposition on December 30, 1964 of the panchen lama, whom the Chinese tried assiduously to take under their wing, and by his condemnation as a leader of the 'clique of reactionary serf owner.'

"Thus the Chinese have severed the remaining political links between Tibet and its two politico-religious structures, and have given a final blow to what they fondly used to call, in the past. "The Special status of Tibet."

"Moreover, the campaign to dispossess Tibetan peasants of their land and to distribute their properties is also being accelerated with the definition of what

precisely constitutes feudal elements being expanded, from time to time to cover a wider and wider range of peasants. In fact, these so-called land reforms are being used by the Chinese Government to advance its own political purpose and to turn the Tibetan peasants into slaves of its system. The naked truth — which all of us must face — is that the Chinese Government is determined to obliterate the Tibetan people; but surely no people can remain for long suppressed. I have faith in the world community. I believe it will be able to help restore to the Tibetans all the freedom which we have enshrined, with such dedication, in the Universal Declaration of Human Rights.

"For our part, we assure the United Nation that — as in the past — we shall continue to give all facilities to the Tibetan refugees, and do our best to alleviate their sufferings and hardships, the Dalai Lama has been living in India for some years now, and is carrying on his religious humanitarian activities without any restriction from us. We shall continue to give the Dalai Lama and his simple and peace loving people these facilities and all our hospitality.

"It is for these reasons that we support, fully and wholeheartedly, the cause of the people of Tibet. Our hearts go out to them in their miserable plight and in terrible suppression that they are suffering at the hands of the Government of the People's Republic of China. Although that regime has given us, and continues to give us, provocations, we have refused to use the Tibetan refugees as pawns in our conflict with China. We do not believe that the sufferings of one people should be made a weapon in the armoury of another.

"In the end, may I express the fervent on behalf of the United Nations that there would soon be an end to the reign of misery and oppression in Tibet and that the people of Tibet will be able to share with us all those human rights that all of us, in different lands are so fortunate to possess and enjoy.

"My delegation will, therefore, vote in favour of the draft resolution contained in Document A/L.473, and I commend the same to this august Assembly."

VIII. PERMANENT TRIBUNAL OF PEOPLES SESSION ON TIBET VERDICT

STRASBOURG, FRANCE, NOVEMBER 20, 1992

The Permanent Tribunal of Peoples (the Tribunal) was established at Bologna, Italy, on 26 June 1979. The function of the Tribunal is to look beyond States to the people of the world and respond to appeals by them to its jurisdiction. The Tribunal examines and declares its findings as to people's rights.

In accordance with its Statute and the requirements of international customary law, the Tribunal accepted three complaints in the name of the Tibetan people against the People's Republic of China — The Tribunal formally informed the People's Republic of China's Embassies in Rome and Paris of the decision to declare the complaint admissible and of the opportunity that would be afforded to it to participate in every stage of the proceedings. The PRC declined to participate in the hearing, but appointed two representatives to represent them.

On the basis of the evidence and submissions addressed to the Tribunal, the Tribunal reached the following decisions and recommendations:

DECISION

For these reasons the Tribunal decides:

- 7.1) That the Tibetan people have from 1950 been continuously deprived of their right to self-determination;
- 7.2) That this breach of a basic right of the Tibetan people has been achieved through the violation of other basic rights of the Tibetan people, among others by depriving them of the right of the exercise of freedom of religion and expression, by arbitrary arrests and punishments without trial, the destruction of religious and cultural monuments and by resorting to torture;

- 7.3) That the population transfers from the People's Republic of China into the territory of Tibet of non-Tibetan peoples is directed towards undermining the ethnic and cultural unity of Tibet;
- 7.4) That the division of the territory of Tibet in two parts, one called the "Autonomous Region of Tibet": and the other made up administratively of parts of various Chinese provinces, is also directed towards destroying the unity and the identity of the Tibetan people; and
- 7.5) That the Tibetan people were autonomously governed for many centuries: achieved a specific state structure after 1911 and that the basic Tibetan institutions are now represented by the Tibetan Government in Exile.

RECOMMENDATIONS

- 8.1) Copy of this Verdict, shall, as soon as possible, be provided by the Secretary General of the Tribunal to the Government of the People's Republic of China, the Government of Tibet in Exile and the Secretary General of the United Nations. It shall also be provided to other interested States and international, national and regional bodies. The Government of the People's Republic of China is called upon without delay to conform to the findings of the Tribunal, to cease human rights abuses, to punish those found responsible and to afford the Tibetan people the exercise of their right to self-determination.
- 8.2) To break the impasse of derogation's from international law and further grave violations of human rights found by it; the Tribunal appeals to the Secretary General of the United Nations to establish appropriate machinery to permit the conduct within Tibet of an act of self determination to determine the future political arrangements of Tibet and its association, if any, with the People's Republic of China. As a preliminary step to this end, a Special Rapporteur for Tibet should be appointed to investigate and report to the organs of the United Nations and the world community on allegations of human rights abuses in Tibet and the desire for, and exercise of, the Tibetan people's right to self-determination, guaranteed by the Charter.
- 8.3) The Secretary General of the Tribunal shall call to the particular notice of the Secretary General of the United Nations, and other relevant international agencies, the complaints received by the Tribunal of forced voluntary sterilisation of women of child bearing age as a deliberate programme of ethnic genocide, with a recommendation that this complaint be the subject of immediate special investigation. Similarly, an international expert group should be established to investigate the charges made during the hearings of the

Tribunal of radioactive pollution allegedly resulting from Uranium mining, nuclear installations and toxic and radioactive waste disposal in Tibet.

- 8.4) Respected non-governmental organisations (such as the International Commission of Jurists, Amnesty International, Lawasia and the Minority Rights Group) shall be provided with a copy of the Tribunal's verdict. They will be urged to continue their vigilant scrutiny of the situation in Tibet. They will be asked to explore ways of reaching beyond the formal structures of State machinery to the peoples of China and Tibet so that a just, peaceful; and lasting relationship could be established between those peoples on the basis of natural respect, recognition of the rights of peoples and faithful compliance with international law.
- 8.5) To further the process of reconciliation proposed in the preceding paragraph, the Tribunal urges relevant non-governmental organisations to convene, in 1993 or 1994, an international conference on the future of Tibet. Such a conference should consider this Verdict and the record of the proceedings of the Tribunal. It should explore concrete ways of working towards reconciliation between the Tibetan and the Chinese peoples. These ways could include the appointment of human rights monitors and the posting of United Nations volunteers in a Tibetan Zone of Peace. Representatives of the Tibetan Government in Exile and of the People's Republic of China should be invited to take part in such a conference and in such measures towards reconciliation.

FRIEDRICH-NAUMANN-STIFTUNG AND TIBETAN PARLIAMENTARY AND POLICY RESEARCH CENTRE

The Friedrich-Naumann-Stiftung (FNSf), Federal Republic of Germany, is a foundation, a non-profit organisation for public benefit. Founded in 1958 by the first postwar president of Germany, Theodor Heuss, it is named after the liberal statesman Friedrich Naumann who died in 1919. The FNSf is the Foundation for ideas on liberty and training in freedom. It promotes the liberal principle of freedom in Human Dignity in all sectors of society, both nationally as well as internationally, in industrialised countries as well as developing countries.

It is the goal of liberal policies that all citizens can live together freely in an open society; the civic society. Human beings need from in order to realise their full human potential. Liberal policies want to maintain the freedom of the citizens to make decision in all spheres of life, and they believe in the capacity of individuals to organise themselves. They favour equal opportunities, competition and pluralism, and therefore demand free access to education, information, labour, goods and capital markets.

Liberal policies strive for co-operation in development through free international trade and through helping to establish free and responsible civic societies in developing countries. They want a world-wide victory of human and civil rights. The Foundation is active in more than 75 countries. In the South Asian Region comprising of the SAARC countries it concentrates on the promotion of human rights and civic education, environmental protection, fostering free market economies through economic liberalisation and regional economic co-operation, promotion of small and medium scale industries and of consumer advocacy.

These activities are carried out in co-operation with local, national and international NGOs, the emphasis being on self reliance and the building of democratic institutions.

Impressed by the democratic vision of the Tibetans in Exile as projected by the Assembly of Tibetan People's Deputies (Parliament-in-Exile), the FNSf entered into a partnership with the latter to set up the "Tibetan Parliamentary and Policy Research Centre" at New Delhi. The main purpose was to strengthen the Tibetan diaspora in building up a healthy, democratic ethos, prepare and strengthen a framework of legislative, executive and judicial Tibetan institutions, and preserve and promote their national identity, culture and heritage.

Established in January 1994, the Centre has already reached a very representative section of Tibetans residing in India and Nepal, encouraging them to get actively involved in their new democratic institutions and helping their leadership to formulate a vision for the future.

Moreover, the Centre has a sound back-up programme of publications to disseminate information to build up national and international public opinion for the fulfilment of a just cause.

The publication of this report on '*Tibetan People's Rights of Self-determination*' is the outcome of two workshops organised by TPPRC on this theme and is aimed as an exercise to help the Tibetan Polity mature and develop.

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शारदा पुस्तकालय
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For a mature development of Tibetan polity which is the main objective before the Tibetan Parliamentary and Policy Research Centre two workshops were convened in October 1994 and February 1996 in order to examine the rather complex issue of the Collective Right of Self-determination of the Tibetan People.

In this Report we have integrated the discussions of the two workshops under seven heads:

1. Introduction
2. Papers and written comments
3. Discussion on the Concept of Self-determination
4. Discussion on the Legitimacy of State Authority
 - (a) The Historical Perspective
 - (b) Legal Perspective
 - (c) Political Socio-economic Perspective.
5. Discussion on Legitimacy of Right to Self-determination.
 - (a) The Historical Perspective
 - (b) Legal Perspective
 - (c) Political Socio-economic Perspective
6. Modalities and Strategies
7. Recommendations Documents.

